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June 25, 2004

TRA DOCKET ROOM

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Joint Petition for Arbitration of NewSouth Communications Corp., et al. of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended*
Docket No. 04-00046

Dear Chairman Tate

Enclosed are the original and fourteen copies of Direct Testimony on behalf of BellSouth from the following witnesses:

Carlos Morillo
Scot Ferguson
Eric Fogle
Kathy Blake
Eddie L. Owens

Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

CERTIFICATE OF SERVICE

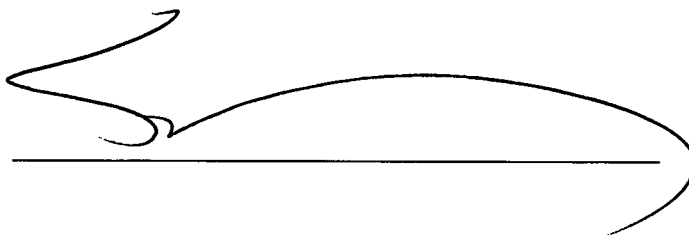
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A handwritten signature in black ink, appearing to read "John J. Heitmann", is written over a horizontal line.

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF EDDIE L. OWENS
3 BEFORE THE TENNESSEE REGULATORY AUTHORITY
4 DOCKET NO 04-00046
5 JUNE 25, 2004

6
7 Q. PLEASE STATE YOUR NAME, YOUR BUSINESS ADDRESS, AND
8 YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS,
9 INC. ("BELLSOUTH").

10
11 A. My name is Eddie L. Owens My business address is
12 675 West Peachtree Street, Atlanta, Georgia 30375. I am currently a
13 Manager - Interconnection Services Local Operations and have served
14 in my present position since October 2000

15
16 Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.

17
18 A. My business career spans over 24 years with BellSouth and my
19 experience covers a wide range of network centers, as well as
20 telephone equipment sales and customer service. Specifically, I have
21 managed and/or supported the following centers: Switching Control
22 Center, Network Operations Center, Access Customer Advocate
23 Center, Local Carrier Service Center, and Customer Wholesale
24 Interconnection Network Services Center. I have participated in and
25 provided technical assistance for numerous Competitive Local

1 Exchange Carrier ("CLEC") workshops in Florida, Georgia, and
2 Louisiana on issues dealing with pre-ordering, ordering, provisioning,
3 maintenance, and repair of resold services and Unbundled Network
4 Elements ("UNEs"). Currently, I am responsible for directly supporting
5 maintenance and repair and provisioning activities and indirectly
6 supporting pre-ordering and ordering activities for BellSouth's
7 wholesale market. Such activities include the development of
8 processes for the ordering and provisioning of UNEs for wholesale
9 market customers.

10
11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?

12
13 A In my testimony, I will address the technical and operational aspects of
14 several unresolved arbitration issues that have been raised by KMC
15 Telecom V, Inc. & KMC Telecom III LLC ("KMC"), NewSouth
16 Communications Corp. ("NewSouth"), NuVox Communications Corp.
17 ("NuVox"), and Xspedius Companies ("Xspedius") in a Joint Petition for
18 Arbitration filed with the Tennessee Regulatory Authority ("Authority")
19 on February 11, 2004. Specifically, I will address the following issue
20 numbers, in whole or in part: 2-23, 3-2, 6-8, 6-11, and 7-2.

21
22 Q. HAVE THE PARTIES RESOLVED ANY ISSUES SINCE THE
23 PETITIONERS FILED ON FEBRUARY 11, 2004?

24
25 A. Yes. The following issues have been successfully resolved between

1 the parties; therefore BellSouth offers no prefiled testimony on these
2 issues. If it is later determined that one of these issues is not
3 completely resolved, Bellsouth reserves the right to file additional
4 testimony. Resolved issues: 2-23(d), 2-23(e), and 3-10.
5

6 **Item 41(c); Issue No. 2-23(c) Under what circumstances, if any, should**
7 **BellSouth be required to install new network terminating wire (UNTW)**
8 **for the use of the CLEC? (2.16.2.3.2)**
9

10 Q. SUBPART (C) OF THIS ISSUE ASKS THE QUESTION "UNDER
11 WHAT CIRCUMSTANCES, IF ANY, SHOULD BELL SOUTH BE
12 REQUIRED TO INSTALL NEW NETWORK TERMINATING WIRE
13 ('UNTW') FOR THE USE OF THE CLEC? WHAT IS BELL SOUTH'S
14 POSITION ON SUBPART (C) OF THIS ISSUE?
15

16 A. BellSouth's position is that BellSouth has no obligation to build a
17 network for CLECs and thus has no obligation to extend (i.e., add wire)
18 UNTW in order for a CLEC to serve a customer. It is well settled that
19 BellSouth has certain obligations to unbundle the network it owns and
20 operates pursuant to the Telecommunications Act of 1996 ("the Act"),
21 but that BellSouth does not have an obligation to build a network of the
22 CLECs' choosing. *Triennial Review Order* ¶ 632 and ¶ 636.
23

24 Q. WHEN BELL SOUTH PERFORMS ROUTINE NETWORK
25 MODIFICATIONS ON ITS NETWORK, WOULD THAT INCLUDE

1 EXTENDING UNTW AND THEREFORE BE IN COMPLIANCE WITH
2 THE FCC'S RULES?

3
4 A No. BellSouth is not required to create or place new facilities for
5 CLECs. The FCC's *Triennial Review Order* (§ 632) states: "By 'routine
6 network modifications' we mean that incumbent LECs must perform
7 those activities that incumbent LECs regularly undertake for their own
8 customers. Routine modifications, however, do not include the
9 construction of new wires (i.e., installation of new aerial or buried
10 cable) for a requesting carrier." BellSouth provides routine network
11 modifications to its facilities only and has no obligation to extend
12 UNTW for CLECs. Extending wiring, including but not limited to
13 extending UNTW, is not a part of BellSouth's performance of routine
14 network modifications that it undertakes for its own customers.

15
16 Further, because the UNTW ends at the demarcation point, which in
17 many cases is a Network Interface Device ("NID") or jack, complying
18 with the Joint Petitioners' language on this issue would essentially
19 require BellSouth to perform work on deregulated inside wiring as part
20 of its Section 251 obligations, which is clearly not required under the
21 Act. However, BellSouth will perform this type of inside wiring work for
22 an additional charge based on negotiated terms in a commercial
23 agreement.

1 **Item No. 61 (Issue No. 3-2) [Section 9.6]: (A) What is the definition of a**
2 **global outage? (B) Should BellSouth be required to provide upon**
3 **request, for any trunk group outage that has occurred 3 or more times**
4 **in a 60-day period, a written root cause analysis report? (C)(1) What**
5 **target interval should apply for the delivery of such reports? (C)(2)**
6 **What target interval should apply for reports related to global**
7 **outages?**
8

9 **Q. SUBPART (A) OF THIS ISSUE ASKS THE QUESTION "WHAT IS**
10 **THE DEFINITION OF A GLOBAL OUTAGE?" WHAT IS**
11 **BELLSOUTH'S POSITION ON SUBPART (A) OF THIS ISSUE?**
12

13 **A. BellSouth's definition of a global outage is an outage consisting of an**
14 **entire trunk group. BellSouth believes its definition is unambiguous**
15 **and that global outages (under BellSouth's definition) will be readily**
16 **identifiable.**
17

18 **Q. WHAT IS WRONG WITH THE JOINT PETITIONERS' DEFINITION OF**
19 **A GLOBAL OUTAGE?**
20

21 **A. The Joint Petitioners define a "global outage" as "outages that impact**
22 **an entire market or all traffic between two carriers or an entire trunk**
23 **group." BellSouth's concern is that the Joint Petitioners' proposal is**
24 **nebulous and would lead to disagreements as to when an entire**
25 **market or traffic between two carriers is "impacted." The situations**

1 Petitioners might consider as global-type outages could simply be
2 individual trunk group members, which clearly should not be
3 considered global outages. BellSouth's proposal, in comparison, is
4 straightforward and unambiguous and thus should be adopted.

5
6 Q. SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "SHOULD
7 BELLSOUTH BE REQUIRED TO PROVIDE UPON REQUEST, FOR
8 ANY TRUNK GROUP OUTAGE THAT HAS OCCURRED THREE (3)
9 OR MORE TIMES IN A 60-DAY PERIOD, A WRITTEN ROOT CAUSE
10 ANALYSIS REPORT?" WHAT IS BELLSOUTH'S POSITION ON
11 SUBPART (B) OF THIS ISSUE?

12
13 A. BellSouth's position is that it should provide a written root cause
14 analysis for global outages (that is, outages of entire trunk groups), but
15 not for other, more limited outages, such as outages of individual trunk
16 group members. BellSouth currently has processes in place to provide
17 root cause analyses for global outages according to BellSouth's
18 proposed definition of the term "global outage" (that is, an outage of an
19 entire trunk group.)

20
21 Q. SHOULD BELLSOUTH PROVIDE A WRITTEN ROOT CAUSE
22 ANALYSIS REPORT NOT ONLY FOR GLOBAL OUTAGES BUT FOR
23 ANY TRUNK GROUP OUTAGE THAT HAS OCCURRED THREE (3)
24 OR MORE TIMES IN A 60-DAY PERIOD, AND WHEN REQUESTED,
25 PROVIDE THE ROOT CAUSE ANALYSIS WITHIN FIVE (5)

1 BUSINESS DAYS AS REQUESTED BY THE JOINT PETITIONERS?

2
3 A. No. First of all, BellSouth provides root cause analyses on entire trunk
4 group outages within BellSouth's network today. There is no need for
5 the provision requested by the CLECs, that a written root cause
6 analysis be provided in every case in which an individual trunk in a
7 given trunk group is out of service three (3) or more times in a 60-day
8 period. It is entirely possible that individual trunk group members may
9 be out of service, but customer service may not be negatively affected.
10 Assume, for example, that one (1) trunk out of a group of 200 is
11 removed from service at midnight. Because the total traffic load is very
12 light at that time, no increase in call blockage would occur. In this
13 example, no root cause analysis would be required because a global
14 outage (that is, the outage of the entire trunk group) has not happened
15 three (3) times in 60 days. Nonetheless, if my hypothetical example
16 occurred three (3) times in 60 days – which, again, has no adverse
17 effect on customers – a root cause analysis would be required under
18 the Joint Petitioners' proposal. Further, the problem with providing
19 written responses within five (5) business days is that this deadline is
20 simply unrealistic. For global/network outages, BellSouth vendor
21 technical support groups have to research the exact cause of the
22 trouble. This effort can be complex and can take anywhere from 10 to
23 30 business days. It is simply unrealistic to require a five (5) day
24 deadline. Moreover, if BellSouth were to commit to five (5) business
25 days, the result could be incomplete root cause analysis reports.

1 Q. SUBPART (C)(1) OF THIS ISSUE ASKS THE QUESTION "WHAT
2 TARGET INTERVAL SHOULD APPLY FOR THE DELIVERY OF
3 SUCH REPORTS?" WHAT IS BELLSOUTH'S POSITION ON
4 SUBPART (C)(1) OF THIS ISSUE?

5
6 A. For subpart (C)(1), there should be no root cause analysis reports for
7 outages other than global outages (that is, outages of entire trunk
8 groups). To provide root cause analysis reports for smaller outages,
9 such as individual trunk group members, would be expensive, time-
10 consuming, and not reveal any systemic or widespread problems. For
11 global outages, the interval should be ten (10) to 30 business days.
12 Obviously, it is in the best interests of BellSouth and CLECs as well as
13 affected end users to have thorough, meaningful analyses used in
14 guiding the development of corrective action plans for global outages.
15 The shorter interval the CLECs propose does not allow enough time
16 for a thorough analysis.

17
18 Q. SUBPART (C)(2) OF THIS ISSUE ASKS THE QUESTION "WHAT
19 TARGET INTERVAL SHOULD APPLY FOR REPORTS RELATED TO
20 GLOBAL OUTAGES?" WHAT IS BELLSOUTH'S POSITION ON
21 SUBPART (C)(2) OF THIS ISSUE?

22
23 A. The target interval for preparing and conveying root cause analyses on
24 global outages should be 10 to 30 business days as discussed above
25 regarding subpart (C)(1)

1 **Item No. 91; Issue No. 6-8 [Section 2.7.10.4]: Should BellSouth be**
2 **required to provide performance and maintenance history for circuits**
3 **with chronic problems?**

4
5 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

6
7 A. BellSouth's position is that network performance and maintenance
8 history is proprietary information and should not be provided.

9
10 Q. WHAT IS BELL SOUTH'S RATIONALE FOR THIS POSITION?

11
12 A. BellSouth is not required to provide maintenance history on circuits.
13 The Joint Petitioners are attempting to include maintenance history
14 records as part of Loop Makeup ("LMU") information. Maintenance
15 history records and loop makeup information are entirely different. As
16 the names imply, maintenance histories provide details of past events
17 and corrective efforts expended. LMU information, on the other hand,
18 shows the existing configuration of loop elements. LMU information
19 provides the physical characteristics of the loop facilities, starting at the
20 BellSouth central office and ending at the serving distribution terminal.
21 LMU data will consist of information such as cable gauge and length,
22 information regarding bridged taps, information regarding load coils,
23 information regarding Digital Loop Carrier ("DLC"), and any other
24 equipment that is part of the local loop facilities. As such, LMU data
25 includes only existing data on loops, rather than maintenance history.

1 Q. WOULD HAVING KNOWLEDGE OF BELL SOUTH'S INTERNAL
2 RESULTS AND MAINTENANCE HISTORIES AID CLECS IN
3 MAINTAINING OR REPAIRING THEIR OWN FACILITIES?
4

5 A. No. BellSouth uses maintenance history information to isolate possible
6 sources of trouble within BellSouth's network and to avoid duplication
7 of efforts. When trouble reports are received, BellSouth makes the
8 necessary repairs to its network, not the CLEC. Moreover, CLECs are
9 mistaken when they claim that having knowledge of BellSouth's
10 internal results and maintenance histories would aid them in
11 maintaining or repairing their own facilities. Thus, the CLECs have no
12 legitimate need for information regarding BellSouth's internal activities.
13 Such a requirement would only add needless expense to BellSouth's
14 network operations. BellSouth is dedicated to ensuring the circuits
15 provided to CLECs meet the designed requirements as set out in
16 various BellSouth and industry standard technical resource
17 documents. Documentation that contains those standards is readily
18 available to the CLEC community.
19

20 **Item No. 94; Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: (A) Should the mass**
21 **migration of customer service arrangements resulting from mergers,**
22 **acquisitions and asset transfers be accomplished by the submission of**
23 **an electronic LSR or spreadsheet? (B) If so, what rates should apply?**
24 **(C) What should be the interval for such mass migrations of services?**
25

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

2

3 A. BellSouth believes that this issue (including all subparts) is not
4 appropriate for arbitration in this proceeding because it involves a
5 request by the CLECs that is not encompassed within BellSouth's
6 obligations pursuant to Section 251 of the 1996 Act.

7

8 Q. SUBPART (A) OF THIS ISSUE ASKS THE QUESTION "SHOULD
9 THE MASS MIGRATION OF CUSTOMER SERVICE
10 ARRANGEMENTS RESULTING FROM MERGERS, ACQUISITIONS
11 AND ASSET TRANSFERS BE ACCOMPLISHED BY THE
12 SUBMISSION OF AN ELECTRONIC LSR [THAT IS, A LOCAL
13 SERVICE REQUEST] OR SPREADSHEET?" WHAT IS
14 BELL SOUTH'S POSITION ON SUBPART (A) OF THIS ISSUE?

15

16 A. Subject to the general objection to the inclusion of this issue in this
17 proceeding, as to subpart (A), BellSouth's position is that each and
18 every merger, acquisition, or asset transfer is unique and requires
19 project management and planning to ascertain the appropriate manner
20 in which to accomplish the transfer, including how orders should be
21 submitted. BellSouth has developed a mergers and acquisitions
22 process that is posted on BellSouth's interconnection website
23 http://www.interconnection.bellsouth.com/ma_process/
24 BellSouth's Carrier Notification SN91083998, dated March 10, 2004,
25 introduced this process. The process identifies the steps that need to

1 be taken by a CLEC to initiate a mergers and acquisition request to
2 BellSouth. Spreadsheet templates are provided on this website for the
3 CLECs to use as part of the mergers and acquisition process. The
4 vast array of services that may be the subject of such a transfer, under
5 the agreement as well as under both state and federal tariffs,
6 necessitates that various forms of documentation may be required.
7 Migrations that are not associated with a merger, acquisition or
8 bankruptcy will be facilitated using other existing processes

9

10 Q DO MASS MIGRATIONS ASSOCIATED WITH MERGERS,
11 ACQUISITIONS, AND/OR ASSET TRANSFERS NECESSARILY
12 REQUIRE NUMBER PORTING?

13

14 A. No Mass migrations associated with mergers, acquisitions, and/or
15 asset transfers are, by their nature, unique situations that do not
16 necessarily require number porting. One example of this would be if
17 Company A acquired Company B. This would result in Company A
18 obtaining all of Company B's switches and eliminating any need for
19 porting.

20

21 Q SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "IF SO, WHAT
22 RATES SHOULD APPLY?" WHAT IS BELL SOUTH'S POSITION ON
23 SUBPART (B) OF THIS ISSUE?

24

25

1 A. As to application of rates as referenced in subpart (B), BellSouth
2 believes that the rates, by necessity, must be negotiated between the
3 Parties based upon the particular services to be transferred and the
4 type and quantity of work involved. This negotiation of rates and
5 intervals is included in the transfer agreement that is part of the
6 mergers and acquisition process that I mentioned previously.

7
8 Q. SUBPART (C) OF THIS ISSUE ASKS "WHAT SHOULD BE THE
9 INTERVAL FOR SUCH MASS MIGRATIONS OF SERVICES?"
10 WHAT IS BELL SOUTH'S POSITION ON SUBPART (C) OF THIS
11 ISSUE?

12
13 A. BellSouth's position is that no finite interval can be set to cover all
14 potential situations. While shorter intervals can be committed to and
15 met for small, simple projects, larger and more complex projects
16 require much longer intervals and prioritization and cooperation
17 between the Parties.

18
19 **Item No. 96; Issue 7-2: (A) What charges, if any, should be imposed for**
20 **records changes made by the Parties to reflect changes in corporate**
21 **names or other LEC identifiers such as OCN, CC, CIC and ACNA? (B)**
22 **What intervals should apply to such changes? (Attachment 7, Section**
23 **1.2.2)**

24

25

1 Q. WHAT IS BELL SOUTH'S UNDERSTANDING OF THIS ISSUE?

2

3 A. BellSouth understands that the Joint Petitioners are requesting that the
4 CLECs should be afforded one "LEC Change" in any 12-month period
5 without charge. The "LEC Change" referred to consists of making one
6 change of the corporate name, Operating Company Number ("OCN"),
7 Company Code ("CC"), Carrier Identification Code ("CIC"), or Access
8 Customer Name Abbreviation ("ACNA") in the other Party's databases,
9 systems, and records.

10

11 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

12

13 A. First, this issue (including subparts A & B) is not appropriate for
14 arbitration in this proceeding because it involves a request by the
15 CLECs that is not encompassed within BellSouth's obligations
16 pursuant to Section 251 of the 1996 Act. That being said, BellSouth is
17 permitted to recover its costs (whether for one (1) "LEC Change" or
18 one hundred) and the requesting CLEC should be charged a
19 reasonable records change charge. Requests for changes where
20 there is not an actual change in the ownership of assets should be
21 submitted via the Bona Fide Request/New Business Request
22 ("BFR/NBR") process. Requests for changes that occur as a result of
23 mergers, acquisitions and/or transfer of assets will be handled through
24 the mergers and acquisition process previously discussed.

25

1 Q. PLEASE PROVIDE ADDITIONAL SUPPORT FOR BELL SOUTH'S
2 POSITION.

3
4 A. A change in corporate name in BellSouth's record databases requires
5 work effort on the part of BellSouth. While there may be no physical
6 change in the associated service, BellSouth still has work steps it must
7 go through to make records changes, for example, for collocation
8 arrangements and the circuits connected to the collocation
9 arrangements. The information in systems such as Trunks Integrated
10 Record Keeping System ("TIRKS"), Loop Facilities Administration and
11 Control System ("LFACS"), Switch, Line Maintenance Operations
12 System ("LMOS"), billing, etc, must be changed.

13
14 Q. ARE 'LEC CHANGES' SIMPLE ADMINISTRATIVE CHANGES THAT
15 ARE NOT UNDULY TIME OR LABOR INTENSIVE?

16
17 A. No. First, a name change, even if it does not include an asset change
18 in ownership, is not a simple administrative change. With companies
19 the size of the CLECs involved in this arbitration, there are numerous
20 services, circuits, collocation arrangements, and other arrangements
21 that must undergo the records change. These record changes are at
22 the request of the CLEC, not BellSouth. As the cost causer, the CLEC
23 should be responsible for the cost of the change, no matter if it is once
24 per year or once in ten (10) years. Further, during a merger,
25 acquisition, or whatever activity is precipitating the name or other

1 records change, the company or companies involved should consider
2 such costs as part of the business arrangement. These records
3 changes require work to be performed that generates costs that
4 BellSouth should be permitted to recover. It is not appropriate or fair to
5 require BellSouth to fund the cost of the name change for these
6 companies. The suggestion that a "free" change once a year is
7 somehow reasonable along with the implication that it doesn't cost
8 BellSouth anything to make changes is simply wrong, and patently
9 unfair.

10
11 Q. WHAT IS THE IMPACT OF A CORPORATE NAME CHANGE TO
12 BELLSOUTH'S DATABASES?

13
14 A. The cost of unbundled network elements and interconnection do not
15 include the administrative costs BellSouth incurs for changing a
16 CLEC's corporate name. When corporate names are changed in the
17 telecommunications industry, it involves numerous changes in multiple
18 billing databases and other record databases. In some cases, there
19 could be hundreds of thousands of accounts involved and each of
20 those accounts will have to be changed. As such, the cost caused by
21 the CLEC should be borne by the CLEC.

1 Q. WHAT IS BELLSOUTH'S POSITION ON ITEM 96(B)?

2

3 A. The interval for any such project would be determined based upon the
4 complexity of the project. As I discussed previously, this negotiation of
5 rates and intervals is included in the transfer agreement that is part of
6 the mergers and acquisition process. It is extremely difficult, if not
7 impossible, to establish an interval before the scope of the project and
8 required work has been determined. It is only reasonable that the
9 quantity of circuits, collocation arrangements, etc., would drive the
10 length of time it would take to complete the records' changes.

11

12 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

13

14 A. Yes.

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF KATHY K. BLAKE
3 BEFORE THE TENNESSEE REGULATORY AUTHORITY
4 DOCKET NO. 04-00046
5 JUNE 25, 2004
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR
9 BUSINESS ADDRESS.

10

11 A My name is Kathy K. Blake. I am employed by BellSouth as Director – Policy
12 Implementation for the nine-state BellSouth region My business address is
13 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.

17

18 A. I graduated from Florida State University in 1981 with a Bachelor of Science
19 degree in Business Management After graduation, I began employment with
20 Southern Bell as a Supervisor in the Customer Services Organization in
21 Miami, Florida In 1982, I moved to Atlanta where I held various positions
22 involving Staff Support, Product Management, Negotiations, and Market
23 Management within the BellSouth Customer Services and Interconnection
24 Services Organizations In 1997, I moved into the State Regulatory
25 Organization with various responsibilities for testimony preparation, witness

1 support and issues management I assumed my currently responsibilities in
2 July 2003.

3
4 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

5
6 A. The purpose of my testimony is to provide BellSouth's position on the
7 numerous unresolved policy issues in this proceeding with respect to the
8 General Terms and Conditions section of the proposed Agreement as well as
9 Attachments 2 and 3. The issues are summarized in the Joint Petition for
10 Arbitration ("Petition"), filed on February 11, 2004, with the Tennessee
11 Regulatory Authority ("Authority") on behalf of NewSouth Communications
12 Corporation ("NewSouth"), NuVox Communications, Inc. ("NuVox"), KMC
13 Telecom V., Inc. ("KMC V") and KMC Telecom III LLC ("KMCIII")
14 (together, "KMC"), and Xspedius Communications, LLC on behalf of its
15 operating subsidiaries Xspedius Management Co Switched Services, LLC
16 ("Xspedius Switched") and Xspedius Management Company of Chattanooga,
17 LLC ("Xspedius Chattanooga") (together, "Xspedius")¹. I henceforth refer to
18 these companies as the "Petitioners". Further, I provide supporting evidence
19 that the interconnection agreement language proposed by BellSouth is the
20 appropriate language that should be adopted for this interconnection agreement
21 by the Authority.

22

¹ The wording of some of the issues will be revised and updated by the parties and reflected on a Joint Issues Matrix to be filed on June 25, 2004

1 Q. PLEASE IDENTIFY BELL SOUTH'S WITNESSES AND THE ISSUES
2 THEY ADDRESS

3
4 A. Following is a chart identifying BellSouth's five witnesses and the issues they
5 address in whole or in part:

6

Witness	Issues
Kathy Blake	G-1, G-2, G-3, G-4, G-5, G-6, G-7, G-8, G-9, G-13, G-14, G-15, G-16, 2-4, 2-5, 2-7, 2-8, 2-9, 2-12, 2-17, 2-32, 2-33, 2-34, 2-38, 2-39, 2-40, 3-3, 3-4, 3-5, 3-6, 3-8, 3-12, 3-14,
Carlos Morillo	6-1, 6-2, 6-3, 6-5, 6-6, 6-7, 6-9, 6-10, 7-1, 7-3, 7-4, 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-12, 11-1
Eric Fogle	2-13, 2-15, 2-18, 2-19, 2-20, 2-27, 2-28, 4-1, 4-2, 4-3, 4-4, 4-7, 4-8, 4-9
Scot Ferguson	2-25, 2-37, 6-4
Eddie Owens	2-23, 3-2, 6-8, 6-11, 7-2

7
8 Q. HAVE THE PARTIES RESOLVED ANY ISSUES SINCE THE
9 PETITIONERS FILED ON FEBRUARY 11, 2004?

10
11 A. Yes. The following issues have been successfully resolved between the
12 parties; therefore BellSouth offers no prefiled testimony on these issues. If it is
13 later determined that any of these issues is not completely resolved, BellSouth
14 reserves the right to file additional testimony. Resolved issues: G-10, G-11,
15 1-1, 1-2, 2-1, 2-2, 2-3, 2-6, 2-10, 2-11, 2-14, 2-16, 2-21, 2-22, 2-23 (a,b,d,e), 2-
16 24, 2-26, 2-29, 2-30, 2-31, 2-35, 2-36, 2-41, 3-1, 3-7, 3-9, 3-10, 3-11, 3-12, 3-
17 13, 4-5, 4-6, 4-10, 6-3(a) and 7-11.

18

1 Q SINCE THE FILING OF THE ORIGINAL PETITION FOR ARBITRATION
2 IN TENNESSEE, HAVE ANY RECENT COURT DECISIONS RESOLVED
3 ANY OF THE ISSUES FOR WHICH YOU WERE PREPARED TO
4 TESTIFY TO IN THIS ARBITRATION?

5
6 A. Yes, the following issues are no longer appropriate to arbitrate because certain
7 Federal Communications Commission ("FCC") unbundling rules have been
8 vacated and therefore BellSouth no longer has an obligation under Section 251
9 of the Telecommunications Act of 1996 ("1996 Act") to offer certain elements
10 on an unbundled basis (as is the case with local switching, high capacity
11 transport, high capacity loops, and dark fiber). The issues addressed in my
12 testimony that are no longer appropriate for arbitration are: Issues 2-32, 2-33
13 & 2-34 regarding high capacity Enhanced Extended Links ("EELs") and Issue
14 2-38 regarding offering SS7 Signaling as an unbundled network element
15 ("UNE").
16

17 Q. PLEASE EXPLAIN.

18
19 A. On March 2, 2004, the United States Court of Appeals for the District of
20 Columbia Circuit ("D.C. Circuit") vacated certain FCC rules regarding UNEs
21 that had been established by the FCC in its *Triennial Review Order*.² *United*

² See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Report, and Order and Order on Remand and Further Notice of Proposed Rulemaking*, FCC 03-36, dated February 20, 2003 and released August 21, 2003 (*Triennial Review Order*)

1 *States Telecom Assoc. v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”).
2 Specifically, the D.C. Circuit vacated the FCC’s rules associated with the
3 unbundling of local switching, high capacity dedicated transport, dark fiber,
4 and high capacity loops. The D.C. Circuit summarized the vacated FCC
5 unbundling rules as follows:

6 We vacate the Commission’s subdelegation to state commissions of
7 decision-making authority over impairment determinations, which in the
8 context of this Order applies to the subdelegation scheme established for
9 mass market switching and certain dedicated transport elements (DS1,
10 DS3, and dark fiber). *We also vacate and remand the Commission’s*
11 *nationwide impairment determinations with respect to these elements.*³

12

13 Q. WHAT WAS THE EFFECTIVE DATE OF THE D.C. CIRCUIT’S
14 DECISION?

15

16 A. The above mentioned unbundling rules were vacated by the D.C. Circuit on
17 June 16, 2004

18

19 Q. DOES THIS MEAN THAT BELL SOUTH WILL NO LONGER OFFER
20 VACATED ELEMENTS TO CLECS?

21

22 A. Absolutely not. As stated on many occasions, such as in BellSouth’s Carrier
23 Notifications, BellSouth’s public announcements, and BellSouth’s pleadings,

³ *USTA II*, 359 F.3d at 594 [emphasis added].

1 BellSouth is prepared to enter into alternative service arrangements with
2 competitive local exchange carriers ("CLECs") that will allow CLECs to
3 transition from vacated elements to comparable, replacement services at rates,
4 terms, and conditions contained in a separate commercial agreement or
5 contained in applicable tariffs.

6

7 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS REGARDING THE
8 UNRESOLVED ISSUES IN THIS PROCEEDING?

9

10 A. Yes. BellSouth negotiated in good faith with the other parties to this
11 proceeding on many of the unresolved issues. However, when these parties
12 filed their Joint Petition for Arbitration on February 11, 2004, the Petition and
13 attached issues matrix included numerous additional issues, which had only
14 recently been identified by the Petitioners. There was insufficient time
15 remaining before the filing deadline, and BellSouth was not able to provide its
16 positions on these issues for inclusion in the matrix attached to the Petitioners'
17 Petition. BellSouth's response to these issues is included in BellSouth's
18 response to the Petition and attached matrix that was filed with the Authority
19 on March 8, 2004. BellSouth's positions are based upon BellSouth's best
20 understanding as to the nature of these additional issues.

21

22 Q. DO YOU HAVE ANY ADDITIONAL PRELIMINARY COMMENTS?

23

24 A. Yes. There are numerous unresolved issues in this arbitration that have
25 underlying legal arguments. Because I am not an attorney, I am not offering a

1 legal opinion on these issues. I respond to these issues purely from a policy
2 perspective. BellSouth's attorneys will address issues requiring legal
3 argument.

4

5 *Item 1; Issue G-1: What should be the effective date of future rate impacting*
6 *amendments? (Agreement GT&C Section 1.6)*

7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

9

10 A. BellSouth's position is that any future amendments that incorporate Authority-
11 approved rates should be effective ten (10) calendar days after the date of the
12 last signature executing the amendment, or as otherwise ordered in an FCC or
13 Authority Order or Rule

14

15 Q. PLEASE PROVIDE SUPPORT FOR BELL SOUTH'S POSITION.

16

17 A The issue is not so simple that it can be handled as easily as the Petitioners'
18 position implies. In addition to a rate changing in a state commission order,
19 the entire rate structure may have changed as well. Further, state commission
20 orders may not always be clear to the parties and the order may have a ripple
21 effect on other parts of an existing interconnection agreement.

22

23 It is almost always the case that language contained in an order must be
24 converted into contract language. Thirty days (as recommended by the
25 Petitioners) is not enough time to make sure that the language is properly and

1 fully negotiated. In fact, the Petitioner's position conflicts with the parties'
2 agreed upon language, addressing changes in law, which states that the parties
3 will negotiate the appropriate amendment resulting from a Authority order
4 upon thirty days notice and have *forty five additional days* to negotiate the
5 amendment. What the Petitioners are asking is that a rate amendment be
6 effective prior to the date that the parties have agreed upon what the
7 amendment will say.

8
9 BellSouth proposes that rates, terms and conditions should not become
10 effective until ten calendar days after both parties have executed the
11 amendment. Further, there should be no deadline after the effective date of the
12 order by which the amendment should be executed. The only exception should
13 be in the instance where a state commission has explicitly established an
14 effective date for ordered rates.

15
16 Q. WHY IS IT NECESSARY TO WAIT 10 DAYS AFTER SIGNING THE
17 AMENDMENT FOR RATES TO BECOME EFFECTIVE?

18
19 A. Rates cannot automatically take effect upon the signing of an amendment.
20 Once an amendment is executed, BellSouth must enter the rates into its billing
21 systems. Until this is done, any order submitted by a CLEC could be returned
22 to the CLEC for clarification, particularly if the rate does not exist in the
23 billing database, which would cause delays to an end user customer of the
24 CLEC. The 10-day waiting period is a means of ensuring that this does not
25 occur. It also ensures that if a rate does exist in the rate database, that it is the

1 correct rate

2

3 *Item 2; Issue G-2: How should “End User” be defined? (Agreement GT&C*
4 *Section 1.7)*

5

6 Q. WHAT IS BELL SOUTH’S POSITION ON THIS ISSUE?

7

8 A As an initial matter, because the issue as stated by the Petitioners and raised in
9 the General Terms and Conditions section of the Agreement has never been
10 discussed by the Parties, the issue is not appropriate for arbitration. The only
11 discussion between the parties regarding the definition of “end user” has been
12 in the context of high capacity EELs. When the parties agreed to extend the
13 arbitration window, it was also agreed that the scope of those negotiations
14 included only issues that arose from the *Triennial Review Order*. The
15 language addressing “end user” in the General Terms section has been in the
16 Agreement since the parties began negotiations. This language applies to
17 every single use of the term “end user” throughout the entire agreement, which
18 includes eleven attachments, and was not introduced as a result of the *Triennial*
19 *Review Order*. The Petitioners have only become interested in the General
20 Terms language since they reviewed the EELs provisions of the *Triennial*
21 *Review Order*. It is not appropriate now, particularly based on the parties’
22 agreement otherwise, to go back and address the term “end user” as used in the
23 General Terms section of the Agreement. Indeed, to do so would require the
24 parties to negotiate, for the first time, the definition of end user as it applies
25 throughout the agreement. If the parties must go through the entire agreement

1 to negotiate each instance the term "end user" appears, there are approximately
2 300 references that would have to be addressed. Since this has never been
3 negotiated in the more than 15 months that the parties have been meeting to
4 discuss the interconnection agreement, it is not appropriate for the Authority to
5 address the issue as it has been raised by the CLECs.

6
7 Q. WHAT IS BELL SOUTH'S PROPOSED DEFINITION OF "END USER"?

8
9 A. Notwithstanding the controversy about the appropriateness of addressing this
10 issue, the term end user should be defined as it is customarily used in the
11 industry; that is, the ultimate user of the telecommunications service.

12
13 Q. PLEASE EXPAND ON BELL SOUTH'S DEFINITION.

14
15 A. BellSouth's language makes clear that an end user is not an intermediary user
16 of the service, such as an Internet Services Provider ("ISP"). Webster's
17 Dictionary defines "end" as "...the last part of a thing, i.e., the furthest in
18 distance, latest in time, or last in sequence or series... ." In this instance, the
19 "end user" is not necessarily the CLEC's customer, as the Petitioners'
20 language suggests, because that customer may or may not be the end of the
21 sequence or series. In other words, no matter how many wholesalers,
22 enhancers, etc., are in the chain, the "end user" is the ultimate user of the
23 service. For example, a manufacturer of breakfast cereal may have a grocery
24 store chain as its customer, but the end user is the little boy eating his Wheaties
25 at his breakfast table. In contrast, the Petitioners' language creates uncertainty.

1 By defining an end user as any customer, even one who subsequently
2 repackages the service to sell it to another, the Petitioners contradict the
3 commonly understood meaning of the word “end ” Put differently, under their
4 definition, end user means every user, not just the one at the end of the process.

5

6 *Item 3; Issue G-3: Should the agreement contain a general provision providing that*
7 *BellSouth shall take financial responsibility for its own actions in causing, or*
8 *contributing to unbillable or uncollectible CLEC revenue in addition to specific*
9 *provisions set forth in Attachments 3 and 7? (Agreement GT&C Section10.2)*

10

11 Q. WHAT IS BELL SOUTH’S POSITION ON THIS ISSUE?

12

13 A. No. BellSouth believes that the agreement need not contain such a general
14 provision, therefore, BellSouth is not proposing any language in this Section of
15 the Agreement. The Parties have negotiated specific provisions in
16 Attachments 3 and 7 addressing responsibility for billing records deficiencies.
17 It is neither necessary nor appropriate to include this type of provision in the
18 General Terms and Conditions of the Agreement as well. Such inclusion is not
19 only duplicative and administratively burdensome, but may also increase the
20 possibility of inconsistencies between sections of the Agreement.

21

22 Q HAVE THE SPECIFIC PROVISIONS OF ATTACHMENTS 3 & 7
23 ALWAYS BEEN INCLUDED IN BELL SOUTH’S AGREEMENTS?

24

25 A. No. In previous editions of BellSouth’s standard interconnection agreement,

1 there was general information on unbillable and uncollectible revenues.
2 However, over time, as the parties gained more experience in the local
3 competition arena, specific language addressing these issues was developed
4 and included in Attachments 3 & 7. Thus, it is no longer necessary or
5 appropriate to include general language under the General Terms and
6 Conditions section of the Agreement, because such general language would
7 negate or contradict the specifics of Attachments 3 & 7 by having a "catch-all"
8 section in which the Petitioners want BellSouth to be responsible for any
9 scenario or situation for which the parties have not specifically negotiated
10 terms.

11

12 ***Item 4; Issue G-4: What should be the limitation on each Party's liability in***
13 ***circumstances other than gross negligence or willful misconduct? (Agreement***
14 ***GT&C Section 10.4.1)***

15

16 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

17

18 A. The limitation on each Party's liability in circumstances other than gross
19 negligence or willful misconduct should be the industry standard limitation,
20 which limits the liability of the provisioning party to a credit for the actual cost
21 of the services or functions not performed or improperly performed.

22

23 Q. PLEASE COMMENT ON THE PETITIONERS' PROPOSAL.

24

25 A. First, the Petitioners' proposal makes no sense. They propose that liability be

1 7.5% of whatever has been billed in total since the beginning of the
2 Agreement. Under the Petitioners' language, at the beginning of the
3 Agreement, the limitation would function (because nothing would have been
4 billed) to limit liability to \$0.00. By the end of the three-year contract term,
5 the potential liability would be massive. There is no rational basis for such a
6 liability clause. In this instance, the limit is, by description, completely
7 unrelated to the severity of the damage or to any other rational basis for
8 limiting damages. Instead, the Petitioners propose an arbitrary approach that
9 would limit damages based on the happenstance at the point during the
10 contract at which the event in question occurs.

11
12 Further, the language proposed by the Petitioners would provide incentive to
13 the CLEC to inappropriately delay the filing of a claim with BellSouth until
14 several months had passed. Based on the amount of billing between the
15 parties, a CLEC's claim could result in only a few dollars or result in several
16 million dollars. The Petitioners' proposal serves only to encourage CLECs to
17 game the claims process to increase BellSouth's potential liability. It is
18 important to recognize that these are not commercial agreements but are
19 instead interconnection agreements mandated under Section 252 of the 1996
20 Act.

21
22 BellSouth is asking no more than the industry standard limitation. For the
23 foregoing reasons, BellSouth requests the Authority adopt BellSouth's
24 proposed language containing industry standard limitations on liability and
25 reject the Petitioners' proposed language.

1 Q. DO YOU HAVE ANY GENERAL COMMENTS ABOUT ITEMS 4-7
2 (ISSUES G-4 THROUGH G-7)?

3

4 A. Yes It is important to note in addressing Items 4 through 7 that these issues
5 are all integrally related and should be considered together It is BellSouth's
6 belief that, by attempting to increase BellSouth's exposure to liability through
7 decreased limitations of liability and expanding BellSouth's indemnification
8 obligations to essentially cover all failures by BellSouth to perform exactly as
9 the contract requires, Petitioners are attempting to have BellSouth incur the
10 Petitioners' cost of doing business and have BellSouth bear the risk of the
11 business decisions that Petitioners choose to make.

12

13 When viewed in a vacuum, some of Petitioners' positions may seem to be
14 reasonable; even more so when viewed in the context of a truly commercially
15 negotiated agreement free from regulation, where prices can be increased to
16 account for increased liability exposure. However, such is not the case here.
17 BellSouth is bound by the cost-based pricing standards of the 1996 Act and
18 cannot change such prices at will to cover the additional costs that would be
19 incurred should the Petitioners' language be adopted. In a legally mandated
20 context, where prices are set based on Total Element Long Run Incremental
21 Cost ("TELRIC") principles, and when taken together and viewed in the
22 context of the Petitioners' end users being able to recover damages from
23 BellSouth even when BellSouth has no relationship with the Petitioners' end
24 users, it is clear that all the Petitioners' seek to do is put themselves at a
25 competitive advantage over BellSouth and all other carriers by having

1 BellSouth assume the risk of their business decisions.

2

3 Added to the Petitioners' desire to have all disputes handled by a court of law
4 and the Petitioners' inclusion of several extremely broad provisions that no
5 carrier could ever comply with in every case for the life of the contract (e.g.,
6 items 12 and 14), it is clear the Petitioners have no intention of competing with
7 BellSouth on a level playing field. There is no obligation under the 1996 Act
8 for BellSouth to subsidize the Petitioners' business plan, which would be the
9 effect of the Petitioners' proposed language on these issues.

10

11 ***Item 5; Issue G-5: If the CLEC does not have in its contracts with end users and/or***
12 ***tariffs standard industry limitations of liability, who should bear the resulting risks?***
13 ***(Agreement GT&C Section 10.4.2)***

14

15 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

16

17 A. BellSouth believes that if a CLEC elects not to limit its liability to its end
18 users/customers in accordance with industry norms, the CLEC should bear the
19 risk of loss arising from that business decision. Further, if a CLEC wants to
20 make a product more attractive by offering a service guaranty, there is nothing
21 to stop the CLEC from doing so. It is not appropriate, however, to offer a
22 product under terms that differentiate it from other providers' products and
23 expect BellSouth to pay when BellSouth does not meet the service date the
24 CLEC promised in its service guaranty

25

1 Q. PLEASE PROVIDE AN EXAMPLE OF WHAT THE PETITIONERS ARE
2 REQUESTING

3
4 A. The Petitioners appear to be giving to their end users on the one hand, and
5 taking from BellSouth on the other. For example, under the Petitioners'
6 language, a CLEC could offer its end user \$1,000.00 per loop if the CLEC
7 does not deliver the loop within the interval promised. If, for whatever reason,
8 BellSouth were unable to deliver a loop within the stated interval, the CLEC
9 would then pass on to BellSouth the CLEC's self-created liability to its
10 customers. This approach is not only obviously unfair; it violates the spirit of
11 the 1996 Act. BellSouth is required to provide service to the CLEC at parity to
12 what it provides to its retail customers. Under the Petitioners' approach, the
13 CLEC could promise its customer perfection to make the service more
14 attractive, then hold BellSouth financially accountable if the wholesale input
15 provided by BellSouth falls short of the perfect performance needed to meet
16 the CLEC's guaranty to its customer.

17

18 ***Item 6; Issue G-6: How should indirect, incidental or consequential damages be***
19 ***defined for purposes of the Agreement? (Agreement GT&C Section 10.4.4)***

20

21 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

22

23 A. Indirect, incidental or consequential damages should be defined according to
24 the pertinent state law. Although I am not an attorney, it is generally known
25 that, in every state, there is a body of law that has developed as the courts have

1 defined the parameters of what constitutes “indirect, incidental or
2 consequential damages.” This definition should control, not some different
3 definition created by the Petitioners.

4
5 In contrast, the Petitioners have agreed that the contract should provide that
6 there will be no liability for incidental, indirect or consequential damages, but
7 they also attempt to define these terms in a way that contradicts that
8 agreement. In other words, both parties agree that there should be no liability
9 for these particular types of damages. The Petitioners, however, have
10 proposed to write into the contract a lengthy and confusing set of
11 circumstances under which liability would attach, even if the damages for
12 which there would be liability are “indirect, incidental or consequential.”
13 Again, the result is that the agreed upon limitation of liability would be
14 eviscerated

15
16 If the parties agree that, for example, consequential damages should not be
17 recoverable, then this agreement can really only be given full effect if all
18 damages of this sort are excluded. However, it makes no sense to agree that
19 there should be no liability for damages of a particular type, and then qualify
20 that agreement to such an extent that it effectively ceases to exist This,
21 however, is exactly what the Petitioners are attempting to do.

22

1 Q. ARE YOU OPPOSED TO THE PETITIONERS' APPROACH FOR ANY
2 OTHER REASON?

3

4 A. Yes, BellSouth is also opposed to the "qualifying" language proposed by the
5 Petitioners because it is extremely vague and would be extremely difficult to
6 implement. The Petitioners have proposed to add a single clause of more than
7 100 words to this section of the Agreement that is so convoluted that it is
8 virtually indecipherable. The result of this addition would be to create
9 considerable confusion as to when the limitation of liability that the parties
10 have otherwise already agreed upon would, or would not, apply.

11

12 *Item 7; Issue G-7: What should the indemnification obligations of the parties be*
13 *under this Agreement? (Agreement GT&C Section 10.5)*

14

15 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

16

17 A. BellSouth believes the Party receiving services should indemnify the party
18 providing services from: (1) any claim, loss or damages from claims for libel,
19 slander or invasion of privacy arising from the content of the receiving party's
20 own communications; or, (2) any claim, loss or damage claimed by the end
21 user of the Party receiving services arising out of the Agreement.

22

23 The Petitioners appear to agree. However, the Petitioners also contend that the
24 Party receiving services should be indemnified, defended and held harmless by
25 the Party providing services against claims, loss of damage, etc.

1 Although at first glance the Petitioners' position appears reasonable, a closer
2 examination reveals it is not reasonable at all. For example, while the
3 Petitioners propose some form of limitation of liability, albeit unreasonable,
4 their indemnification language would negate that provision almost totally.
5

6 Q. PLEASE FURTHER EXPLAIN BELLSOUTH'S POSITION.
7

8 A. Although it is appropriate for the receiving party to indemnify the providing
9 party, it is not appropriate for the party providing the services to indemnify the
10 party receiving services in this instance as the Petitioners are suggesting. It is
11 important to consider that interconnection agreements mandated by Sections
12 251 and 252 of the 1996 Act are not commercial agreements. Contracts
13 achieved through Sections 251 and 252 have a long history beginning with the
14 1996 Act and continuing through individual arbitration proceedings resolved in
15 each of the states. What must be offered and the standards that apply to those
16 offerings is, in part, drawn from the language of the 1996 Act, and in part, the
17 result of eight years of decisions by the FCC and various state commissions.
18 As noted under Issue G-4, the services included in a Section 251 agreement are
19 provided on the basis of TELRIC pricing and TELRIC pricing does not include
20 the cost of open-ended indemnification of the party receiving services. If one
21 of the costs of providing UNEs and interconnection is damage payments that
22 the Petitioners seek through their language, then those damages should also be
23 recovered through the cost of UNEs and interconnection. However, this is not
24 the case.
25

1 Further, although BellSouth is not dictating a course of action for the
2 Petitioners, simply stated, if the Petitioners would limit their liability to their
3 end users through their tariffs or contracts as telecommunications carriers,
4 including the Petitioners, typically do, there would be no issue here to resolve.

5

6 *Item 8; Issue G-8: What language should be included in the Agreement regarding a*
7 *Party's use of the other Party's name, service marks, logo and trademarks?*
8 *(Agreement GT&C Section 11.1)*

9

10 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

11

12 A. BellSouth's position is that the CLECs' use of BellSouth's name should be
13 limited to (1) factual references that are necessary to respond to direct inquiries
14 from customers or potential customers regarding the source of the underlying
15 services or the identity of repair technicians; and (2) truthful and factual
16 comparative advertising that does not imply any agency relationship,
17 partnership, endorsement, sponsorship or affiliation with BellSouth and that
18 uses the name solely in plain-type, non-logo format. CLECs should not
19 otherwise be entitled to use BellSouth's name, service mark, logo or
20 trademark.

21

22 Q WHY ARE YOU OPPOSED TO THE APPROACH PROPOSED BY THE
23 PETITIONERS?

24

1 A. The Petitioners propose to add to the Agreement a provision saying, in effect,
2 that trademark law, whatever it may be, would apply. While in concept this
3 appears reasonable, BellSouth believes that this general citation to law would
4 be insufficient in this particular instance. Based on past, real world experience,
5 BellSouth believes that the Agreement should specifically spell out the limited
6 circumstances under which the CLECs may use BellSouth's name.

7
8 Over the last several years, this area is one that has proven to be fraught with
9 disagreement between BellSouth and CLECs as to what sort of comparative
10 advertising, and the specific use of BellSouth's name in that advertising,
11 should be allowed. Although BellSouth does not object to its name being used
12 in plain-type, non-logo format for the purposes of truthful, comparative
13 advertising, its experience has been that some CLECs use BellSouth's name in
14 their advertising in a way that does not meet this standard, that is, in a way that
15 is not entirely truthful. The CLECs in these instances have, as one might
16 suspect, asserted that their use of BellSouth's name is appropriate. The result
17 is that there is a dispute that must be resolved, or in some cases, litigated.

18 Given BellSouth's experience in this area, it only makes sense to utilize this
19 experience to try to pro-actively avoid as many disputes as possible
20 Therefore, throughout negotiations, BellSouth has tried to reach an agreement
21 with the Petitioners as to the parameters of acceptable comparative advertising.
22 The Petitioners ultimately, have declined to accept these parameters, and want
23 to revert back to the general language that trademark law applies, whatever it
24 is. Again, BellSouth believes that, to avoid subsequent disputes (over
25 interpretation of the law, or otherwise) it is important that the Agreement

1 specifically spell out the circumstances under which the Petitioners may use
2 BellSouth's name.

3

4 ***Item 9; Issue G-9: Under what circumstances should a party be allowed to take a***
5 ***dispute concerning the interconnection agreement to a Court of law for resolution***
6 ***first? (Agreement GT&C Section 13.1)***

7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

9

10 A. BellSouth's position is that the Authority should resolve disputes as to the
11 interpretation of the Agreement or as to the proper implementation of the
12 Agreement. However, BellSouth has accommodated the Petitioners' desire to
13 broaden the venues available to them and has included the FCC as an
14 alternative venue for the resolution of disputes. A party should be entitled to
15 seek judicial review of any ruling made by the Authority or the FCC
16 concerning this Agreement, but should not be entitled to take such disputes to a
17 court of law without first exhausting its administrative remedies

18

19 Q. WHAT IS THE RATIONALE FOR BELL SOUTH'S POSITION?

20

21 A. Interconnection agreements achieved through either voluntary negotiations or
22 through compulsory arbitration are bound by Section 252 of the 1996 Act
23 Specifically, Section 252(e)(1) requires that any interconnection agreement
24 adopted by negotiation or arbitration be submitted to the state commission for
25 approval As such, having approved an agreement, the state commission

1 should also resolve any dispute regarding the agreement. The FCC, having
2 regulatory oversight over incumbent local exchange carriers ("ILECs") and
3 CLECs and their obligations under the 1996 Act, may also act in its regulatory
4 capacity to resolve disputes resulting from interconnection agreements. It is
5 the state commissions and the FCC that have the expertise in these matters.

6
7 Similar to what happens in a commercial arbitration, courts of law often do not
8 have the technical expertise or background to be the initial venue for a dispute
9 resolution. Should the issue eventually go to a court of law, the Parties, the
10 state commission and/or FCC would be able to supply a full record of the
11 dispute to the court to use during its deliberations. BellSouth is not excluding
12 courts of law "from the available list of venues available to address disputes
13 under this agreement" as Petitioners' state. BellSouth's position is that courts
14 of law should not be the first step in resolving a dispute arising out of these
15 regulatory obligations.

16
17 Q. HAS THE AUTHORITY PREVIOUSLY DEALT WITH A SIMILAR
18 ISSUE?

19
20 A. Yes. In a previous arbitration proceeding involving BellSouth and AT&T
21 (Docket No. 00-00079), in its Final Order of Arbitration Award, dated
22 November 29, 2001 the Authority addressed its role in resolving agreement
23 disputes. The issue being arbitrated regarded whether or not a third party
24 commercial arbitrator should be used to resolve disputes under the
25 interconnection agreement. In ruling that the Authority should resolve all

1 disputes that arise under the agreement, the Authority stated as follows:
2 “Resolution of interconnection agreement disputes by the Authority is
3 necessary to ensure consistent interpretation of interconnection agreements and
4 application of public policy. Moreover, consideration by the Authority will
5 ensure compliance with applicable state law and Authority rulings.” [Page 32]

6
7 *Item 12; Issue G-12: Should the Agreement explicitly state that all existing state*
8 *and federal laws, rules, regulations, and decisions apply unless otherwise*
9 *specifically agreed to by the Parties? (Agreement GT&C Section 32.2)*

10
11 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?

12
13 A. No, such an explicit statement in the Agreement is not necessary. Although
14 the Petitioners’ position appears reasonable on its face, it is important to
15 understand how this issue has arisen, as well as the subtext of the Petitioners’
16 proposal.

17
18 Q. PLEASE FURTHER EXPLAIN BELLSOUTH’S POSITION.

19
20 A. It appears that the Petitioners’ purpose with this issue is to insure that they get
21 at least two opportunities to negotiate and/or arbitrate the terms of the contract.
22 Once the initial terms of an agreement are settled and the parties sign the
23 Agreement, the Agreement should control on all negotiated items. The
24 Petitioners, however, want to reserve the ability to later search an order to find
25 language different from that in the contract, and to use that difference to

1 reopen negotiations even if the language that is in the agreement reflects the
2 parties' attempt to implement the requirements of the order. In this manner,
3 nothing is truly settled and the initial contract language is meaningless. The
4 Petitioners should not be able to use this issue to get "two bites at the apple."
5

6 Q. PLEASE PROVIDE SUPPORT FOR BELL SOUTH'S POSITION.
7

8 A. There are sometimes instances in which, for example, there is a question of
9 how to implement an FCC rule, especially in light of language that appears in
10 the order that first sets forth the rule. In this instance, the parties would
11 normally review the ordering paragraphs and enter into discussions in an
12 attempt to clarify the meaning of the rule and subsequently develop contract
13 language. Although the Petitioners spent approximately 12 months fully
14 negotiating every aspect of this Agreement, they still want additional language
15 in the General Terms as a "catch-all" for anything they did not negotiate
16 specifically.
17

18 There are countless examples of language in the Agreement where the parties
19 have disagreed on the meaning of a rule and, in an effort to negotiate mutually
20 agreeable, contractually binding provisions, the parties have looked to the
21 order for clarification. In some instances, the parties have reached agreement
22 and have drafted mutually agreeable contract provisions. In other cases, the
23 parties were unable to agree and are now arbitrating the issue. Examples of
24 those two scenarios where the Parties are either agreeing to language different
25 from the rule or arbitrating the meaning of the rule based on the *Triennial*

1 *Review Order*, include language relating to the definition of interoffice
2 transport, line conditioning, co-carrier cross connects, dedicated transport as it
3 relates to reverse collocation, fiber to the home, and conversions from
4 unbundled network elements to wholesale services.

5
6 What the Petitioners seek to do is create a third category, contract language
7 that has been agreed to and that set forth the respective obligations of the
8 parties and yet may later be challenged by a Petitioner as not truly reflecting
9 what the Parties had agreed to. In that manner, as explained above, the
10 Petitioners would always get "two bites at the apple" - the first bite during
11 contract negotiations and the second bite at some later, unspecified time, when
12 they would seek out some aspect of an order and, based on their interpretation
13 at that point in time, they would allege that BellSouth had violated its
14 obligations under the Agreement. This would put BellSouth in the intolerable
15 position of not knowing exactly what its contractual obligations are until the
16 Petitioners alleged they had violated them. The main purpose of negotiation
17 and arbitration is to resolve such issues at the initiation of the contract so that
18 the parties can live up to its terms for the life of the contract.

19
20 ***Item 13; Issue G-13: How should the Parties deal with non-negotiated deviations***
21 ***from the state Authority-approved rates in the rate sheets attached to the***
22 ***Agreement? (Agreement GT&C Section 32.3)***

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

2

3 A. Any non-negotiated deviations from ordered rates should be changed by
4 amendment of the agreement upon discovery by a party and should be applied
5 prospectively regardless of whether the rate increases or decreases as a result
6 of such amendment. It is important to understand that Authority orders are not
7 fed into BellSouth's rating systems – only the rate sheet for the applicable
8 CLEC is entered into the rate database. It is therefore important that CLECs
9 review their rate sheets to make sure of what they are signing and what is being
10 entered on their behalf. It is the responsibility of both parties to ensure proper
11 billing. Because this is a shared burden, any deviations identified should be
12 corrected via an amendment to the contract on a prospective basis regardless of
13 whether the correction results in an increase or decrease of the rate. These
14 Petitioners or any CLEC cannot simply absolve themselves of any
15 responsibility for reviewing the rates in their contracts because it is BellSouth
16 that actually enters the rates into a rate database. To the contrary, the CLECs
17 have access to the same Authority-ordered rates as BellSouth, as well as any
18 other rates negotiated between the parties.

19

20 *Item 14; Issue G-14: Can either Party require, as a prerequisite to performance of*
21 *its obligations under the Agreement, that the other Party adhere to any requirement*
22 *other than those expressly stipulated in the Agreement or mandated by Applicable*
23 *Law? (Agreement GT&C Section 34.2)*

24

25 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

1 A. BellSouth's position is that "yes", under certain, very limited circumstances,
2 each party should be able to require certain actions by the other party to the
3 agreement that are not strictly required by the language of the contract.

4
5 Q. HOW DID THIS ISSUE FIRST ARISE?

6
7 A. A dispute originally arose from the specific circumstances described in Item
8 Number 93 (Issue 6-10). The topic of that particular issue is whether
9 BellSouth should be allowed to require the CLEC to have a billing, operating
10 and/or collection agreement with a long distance carrier if the CLEC wants to
11 port the end user while maintaining that long distance carrier as the end user's
12 long distance provider.

13
14 In the apparent belief that this gives rise to some larger issue, the Petitioners
15 have demanded that much broader language be included in the General Terms
16 and Conditions to provide that if one party demands performance under the
17 Agreement, the other party cannot refuse to comply on the basis of some issue
18 or matter that is not set forth within the contract. In other words, that party
19 cannot refuse to perform if the language of the contract, standing alone, would
20 appear to make it obligated to do so.

21
22 Q. WHY DO YOU OPPOSE THE INCLUSION OF THIS LANGUAGE?

23
24 A. At the outset, BellSouth notes that this issue is really different than Issue 6-10.
25 In that case, the issue is whether a requirement to obtain third party

1 authorization should be included in the Agreement. This issue (as raised by
2 the Petitioners) is whether a party can impose a condition for contract
3 performance that is not in the Agreement
4

5 There are three problems with the Petitioners' proposed language. One, it is
6 extremely broad and vague, and, therefore, difficult to know how it would be
7 applied. In other words, Issue 6-10 at least raises a dispute that occurs in the
8 context of a specific situation. Since all parties understand the context, it is
9 possible to know what is involved in the dispute. It is not possible to know
10 what situations might be covered by the very general contract language
11 proposed by the Petitioners to the effect that a party can never impose an extra-
12 contractual requirement before performing its obligations under the contract.
13

14 Two, it would be extremely unwise of BellSouth to agree to such a provision,
15 and it would be extremely poor public policy for the Authority to impose such
16 a requirement. For example, Attachment 2 requires BellSouth to permit a
17 conversion from an unbundled network element to a tariffed service, upon
18 request of the CLECs. However, as the Authority is well aware, tariffs have
19 certain conditions that must be complied with. This language would
20 effectively prohibit BellSouth from enforcing the terms of its tariff.
21

22 Assume, hypothetically, that a CLEC requests collocation in a BellSouth
23 central office in some way that BellSouth had every reason to believe would
24 result in the central office burning to the ground, but which was not, strictly
25 speaking, prohibited by the language of the Agreement. Under the general

1 language proposed by the Petitioners, BellSouth would have the obligation to
2 allow the collocation, even though it knew it to be unsafe. Likewise, the
3 language proposed by the Petitioners would prohibit BellSouth from refusing
4 to perform under the contract even if a CLEC demand involved the sort of
5 safety issue identified above would result in damage to a customer, would
6 violate a Authority Rule, or would result in potential civil liability to
7 BellSouth. While one might argue that this is an extreme example and the
8 Petitioners may argue that this is not the type of situation that this language is
9 intended to protect against, the language proposed is so broad that, by its
10 terms, it would permit such action. All of which begs the question of why
11 BellSouth (or the Authority) should participate in creating a situation in which
12 issues of safety or other compelling considerations have no place in
13 determining how to apply the contract.

14
15 Three, the language proposed by the Petitioners is ultimately pointless.
16 Building on the hypothetical above, if a CLEC demanded that BellSouth
17 provide collocation in a way that BellSouth believed would damage central
18 office facilities, then BellSouth would obviously decline to do so. The
19 Petitioners appear to contemplate that, in this situation, their proposed
20 language would force BellSouth to provide the requested collocation, even if
21 BellSouth believed there to be a safety issue that would make this compliance
22 extremely unwise. There is simply no need for the provision. Absent this
23 provision, the CLEC might contend that BellSouth's refusal to provide
24 collocation constituted a breach of the agreement, BellSouth might disagree,

1 and there might be a dispute that would subsequently be brought to the
2 Authority for resolution

3
4 The determination of whether the action that BellSouth took in this example to
5 protect the central office is a breach of the contract or not would depend on the
6 parties' respective rights and obligations that are already set forth in the
7 contract, not in the language the Petitioners want to add. If BellSouth's refusal
8 to allow collocation in an unsafe situation is within its contractual rights, then
9 the Petitioners' proposed language would not apply (because it is limited to
10 preventing attempts to impose requirements that are not included in the
11 contract) If refusing to allow the collocation were a breach of the contract,
12 despite being the only prudent course of action, this refusal would be a breach
13 even without the additional language the Petitioners wish to impose. Thus, this
14 language is just excessive verbiage.

15
16 Put simply, the parties have particular contractual rights. If one party asserts
17 its rights in a way that another party believes is unsafe, contrary to public
18 policy, anticompetitive, etc., then it has every reason to refuse the request.
19 Whether this refusal constitutes a technical violation of the agreement, and
20 whether there should be any liability as a result of this, are matters that can be
21 sorted out in a subsequent complaint to the Authority No contract language
22 should be added in an attempt to create a situation in which a party is forced to
23 comply strictly with the terms of the contract, even if doing so creates an
24 unsafe, dangerous, or potentially unlawful situation. Putting a general

1 provision in the agreement that would seek to reach this result is gratuitous at
2 best, and, again, would be extremely poor policy

3
4 *Item 15, Issue G-15: If BellSouth changes a provision of one or more of its Guides*
5 *that would cause CLEC to incur a material cost or expense to implement the*
6 *change, should the CLEC notify BellSouth, in writing, if it does not agree to the*
7 *change? (Agreement GT&C Section 45.2)*

8
9 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

10
11 A. Yes, the CLEC should notify BellSouth in writing if it does not agree to
12 changes made in BellSouth's Guides. BellSouth's Guides include standard
13 procedures that apply equally to all CLECs as well as BellSouth. For example,
14 the Local Ordering Handbook is the CLECs' primary resource tool for
15 submitting Local Service Requests ("LSRs"). The Handbook provides
16 minutely detailed procedures such as order preparation and submission. This
17 is a living document that must change as systems and procedures change and
18 improve.

19
20 The Petitioners' position is basically that the Guides become frozen in time.
21 That is, they agree to accept the Guides, as they exist at the time the
22 Agreement is executed, but attempt to reserve veto power over subsequent
23 changes. This situation is patently unworkable. Again, the Guides set forth
24 standardized procedures that are followed to allow systems and processes to
25 work for all CLECs. If every CLEC is allowed veto power over changes, then

1 obviously no change could be made unless every CLEC agrees. The
2 administrative burdens to the process of attempting to obtain uniform CLEC
3 approval are unworkable. Even worse, if any given CLEC has the power to
4 thwart the process of making necessary systems changes, then BellSouth's
5 ability to provide service to all CLECs will be severely compromised.

6

7 If BellSouth allows a CLEC the right to opt out of the requirements of a Guide,
8 the CLEC should notify BellSouth of its decision to do so. Under any
9 circumstances, should the CLEC opt out of the requirement, such action would
10 have no impact on BellSouth's ability to implement the change(s)

11

12 Q. THE PETITIONERS' LANGUAGE REQUIRES THAT A CHANGE THAT
13 WOULD CAUSE A CLEC TO INCUR A MATERIAL COST TO
14 IMPLEMENT WOULD BE NEGOTIATED AS AN AMENDMENT TO THE
15 AGREEMENT. DO YOU AGREE?

16

17 A No. First, what may be interpreted as material to one CLEC may not be
18 material to another. Again, the Petitioners' language is, on its face,
19 unworkable. Further, as noted above, the documents in question are typically
20 guides that affect processes and procedures, and are for use by all CLECs.
21 This is the most efficient means of providing current documentation in a timely
22 manner to all CLECs and the mechanism that enables BellSouth to provision
23 services to the CLECs in a timely manner. To require that any or all of
24 BellSouth's guides be subject to negotiation via an amendment each time one
25 CLEC believes it to represent a material change would result in BellSouth not

1 being able to update or change processes or have a uniform approach to any
2 process or procedure, not to mention the administrative nightmare for the
3 amendment process. Until that one CLEC or several CLECs agreed upon the
4 change, BellSouth could be required to continue to offer multiple processes,
5 possibly dating back to the earliest version incorporated into the oldest
6 agreement. The Petitioners' language could conceivably require BellSouth to
7 amend numerous agreements any time one CLEC cried "material change."
8 Because BellSouth deals with hundreds of CLECs across its nine-state region,
9 such a requirement, as proposed by the Petitioners, could bog down the process
10 and/or procedure improvements to the detriment of all CLECs.

11
12 In the event that BellSouth implements a change that the CLEC community
13 does not agree with, that rare instance should be addressed to BellSouth, or to
14 the Authority, at that time. Those rare exceptions should not be used to justify
15 impeding BellSouth's ability to make the necessary changes and to apply those
16 changes to all CLECs.

17
18 ***Item 16; Issue G-16: If a tariff is referenced in the Agreement, what effect should***
19 ***subsequent changes to the tariff have on the Agreement? (Agreement GT&C***
20 ***Section 45.3)***

21
22 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

23
24 A. If a service is purchased pursuant to a tariff that is referenced in the
25 Agreement, the terms of that tariff at the time of the purchase should apply.

1 Tariffs are not frozen at the time an agreement is signed. When a tariff
2 changes, it changes for all customers of that service whether they are
3 BellSouth's retail customers or CLEC customers. If a CLEC disagrees with a
4 tariff provision (either because the CLEC believes it to be discriminatory, or
5 for some other reason), the CLEC can intervene at the Authority when the
6 tariff is filed and formally state its case. The Authority already has procedures
7 in place pursuant to which BellSouth may revise its tariffs, and pursuant to
8 which a CLEC, or any other party, may object to such revisions. Thus, there
9 should be no requirement that tariff revisions that occur after the Agreement
10 becomes effective be incorporated into the Agreement via negotiation and
11 amendment.

12

13 Q. WOULD THE PETITIONERS' LANGUAGE ITSELF CREATE
14 DISCRIMINATORY TREATMENT BETWEEN CLECS?

15

16 A. Yes. The Petitioners' language would create a discriminatory situation by
17 having the applicable tariff provisions determined by the point in time at which
18 any given interconnection agreement is executed. Thus, older versions of
19 tariffs apply to some CLECs and their customers (those with older
20 agreements), while newer versions of the tariff would apply to the CLECs (and
21 their customers) who have more recently entered into an interconnection
22 agreement. This could involve not only rates, but terms and conditions as well.
23 Paradoxically, the Petitioners would create a discriminatory condition while
24 they seek to avoid what they claim is a different discriminatory condition

25

1 ***Item 22; Issue 2-4: (A) Should CLEC be required to submit a BFR/NBR to convert***
2 ***a UNE or Combination (or part thereof) to other services or tariffed BellSouth***
3 ***access services? (B) In the event of such conversion, what rates should apply?***
4 ***(Attachment 2, Section 1.4.3)***

5
6 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 22A?

7
8 A. No. For conversion of UNE service to wholesale service, BellSouth no longer
9 requires a BFR/NBR because a process has been developed to accomplish this
10 function. Conversions of UNE services to wholesale services may be executed
11 via spreadsheet. A CLEC is permitted to submit a spreadsheet consisting of
12 information that identifies the requested circuits to be converted from a UNE
13 or a UNE combination to a wholesale tariffed service. BellSouth will accept a
14 spreadsheet (and a commingling ordering document that indicates which part is
15 to be filled as a UNE, if applicable) and convert the service from a UNE or
16 UNE combination to wholesale tariffed services in total or in part.

17
18 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 22B?

19
20 A. BellSouth's position and supporting rationale are addressed under Item 23,
21 Issue 2-5.

22
23 ***Item 23; Issue 2-5: (A) In the event UNEs or Combinations are no longer offered***
24 ***pursuant to, or are not in compliance with, the terms set forth in this Agreement,***
25 ***which Party should bear the obligation of identifying those service arrangements?***

1 *(B) What recourse may BellSouth take if CLEC does not submit a rearrange or*
2 *disconnect order within 30 days? (C) What rates, terms and conditions should apply*
3 *in the event of a termination, re-termination, or physical rearrangements of*
4 *circuits? (Attachment 2, Section 1.5)*

5

6 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 23A?

7

8 A. To be clear, this issue addresses only those vacated elements that are already in
9 service as of the signature date of the Agreement that BellSouth is no longer
10 obligated to provide pursuant to Sections 251-252 of the 1996 Act and that
11 must be transitioned to tariffed services, services provided pursuant to a
12 commercial agreement or services pursuant to the Resale Attachment of the
13 Agreement. BellSouth is not required to provide such elements pursuant to
14 Sections 251-252 of the 1996 Act and the Agreement does not contain any
15 rates, terms and conditions for the continued provision of such elements. For
16 example, BellSouth is no longer required to provide Local Channels to CLECs
17 pursuant to Sections 251-252. Thus an expedited process is needed to
18 transition existing Local Channels to Special Access services. The new
19 Agreement will no longer contain these elements; therefore new installations
20 are not at issue here. BellSouth's position is as follows: for UNEs or
21 Combinations that are no longer offered pursuant to, or are not in compliance
22 with, the terms set forth in the Agreement, the CLEC should submit orders to
23 rearrange or disconnect those arrangements or services no later than January 1,
24 2005, or within 30 days of the effective date of the Agreement, if the effective
25 date is after January 1, 2005

1 It is clear which UNEs and combinations are no longer required. CLECs know
2 exactly what they are and the CLECs know what circuits they have that
3 BellSouth is no longer required to offer. That is what the Parties have been
4 negotiating. The CLECs should be responsible for ensuring that they are not
5 violating the Agreement that they have negotiated, executed and agreed to
6 abide by. Therefore, it should be the CLECs' obligation to identify the
7 arrangements that are no longer offered or are not in compliance with the terms
8 of the Agreement and, therefore, must be transitioned. It is reasonable to
9 expect each CLEC to have sufficient records and the ability to research them in
10 order to identify those arrangements that no longer comply with the terms of
11 the Agreement. The Petitioners have had since August 2003, when the
12 *Triennial Review Order* was first released, to do so.

13
14 Further, only the CLEC knows whether it plans to disconnect the facility
15 completely or convert the facility to a BellSouth resold service or access
16 service or to a service offered under a commercial agreement with BellSouth.
17 The CLEC has options with respect to the facilities it requires to provide
18 services to end users, and it also has options as to whether it chooses to self-
19 provision those facilities, buy the facilities from BellSouth or purchase
20 facilities from a third party. Because BellSouth cannot select such options for
21 the CLEC, the CLEC must not only identify the noncompliant facilities, but
22 also instruct BellSouth via the appropriate ordering mechanism as to whether it
23 chooses to disconnect the facility or to replace it with a functionally equivalent
24 BellSouth service.

1 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 23B?

2

3 A. If orders to rearrange or disconnect those arrangements or services are not
4 received by January 1, 2005 or within 30 days after the effective date of the
5 Agreement, if the effective date is after January 1, 2005, BellSouth will be
6 forced to identify the non-compliant elements. BellSouth will notify the CLEC
7 of non-compliant elements and the CLEC will have an additional 15 days to
8 submit orders. If the CLEC's orders are received by January 1, 2005 or within
9 30 days after the effective date of the Agreement, if the effective date is after
10 January 1, 2005, the tariff rates, terms and conditions will be effective as of the
11 date of the conversion. If BellSouth must identify the circuits, the effective
12 date of the tariff rates, terms and conditions will be January 1, 2005 or the
13 effective date of the Agreement, whichever is later. Contrary to the Petitioners'
14 position, and as noted previously, the terms of the Agreement are very clear
15 regarding the requirements with which the CLECs must comply and the
16 network elements that are offered pursuant to the Agreement. There is no
17 question that a local channel is no longer offered at unbundled rates. A local
18 channel is defined within the Agreement as the transmission path between the
19 CLEC's Point of Presence (POP) and the POP serving wire center. There is no
20 question that High capacity EELs (local loop and interoffice transport at DS1
21 and above bandwidths) must terminate within a collocation arrangement.
22 There is also no question that UNE OCn transport is no longer offered. There
23 is nothing ambiguous about these arrangements. Arrangements that no longer
24 qualify as UNEs or combinations of UNEs are clearly understood and should
25 be identifiable by the CLEC through their own records.

1 Q. WHAT IS BELL SOUTH'S POSITION ON ISSUE 23C?

2

3 A. To the extent the CLEC elects to transition non-compliant elements to a
4 tariffed service, resale services or services provided pursuant to a separately
5 negotiated commercial agreement, the rates, terms and conditions of that
6 service to which the CLEC transitions the element[s] must apply. BellSouth
7 cannot simply waive the applicable tariff charges associated with ordering a
8 tariffed service. To the extent the CLEC elects to transition non-compliant
9 elements to a separate agreement, the rates, terms and conditions of the
10 separate agreement to which the CLEC transitions the element shall apply.
11 The applicable charges shall be those negotiated by the parties in that separate
12 agreement.

13

14 *Item 25; Issue 2-7: What rates, terms and conditions should apply for Routine*
15 *Network Modifications pursuant to 47 C.F.R. § 51.319(a)(8) and (e)(5)?*
16 *(Attachment 2, Section 1.6.1)*

17

18 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

19

20 A. BellSouth will perform Routine Network Modifications in accordance with 47
21 C.F.R. §§ 51.319 (a)(8) and (e)(5). Except to the extent expressly provided
22 otherwise in Attachment 2 to the Agreement, if BellSouth has anticipated such
23 Routine Network Modifications and performs them during normal operations
24 and has recovered the costs for performing those modifications through the
25 rates set forth in Exhibit A of Attachment 2, then BellSouth will perform those

1 Routine Network Modifications at no additional charge Routine Network
2 Modifications will be performed within the intervals established for the UNE
3 and subject to the performance measurements and associated remedies set forth
4 in Attachment 9 to the Agreement to the extent such Routine Network
5 Modifications were anticipated in the setting of those intervals. If BellSouth
6 has not anticipated a requested network modification as being a Routine
7 Network Modification and has not recovered the costs of such Routine
8 Network Modification in the rates set forth in Exhibit A of Attachment 2, then
9 the CLEC must pay for the cost to have the work performed. Each request will
10 be handled as a project on an individual case basis. BellSouth will provide a
11 price quote for the request, and upon receipt of payment from the CLEC,
12 BellSouth will perform the Routine Network Modification.

13

14 Q. IN TESTIMONY IN OTHER STATES, THE PETITIONERS HAVE TAKEN
15 EXCEPTION TO THE INCLUSION OF THE PHRASE "EXCEPT TO THE
16 EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS
17 ATTACHMENT" CONTAINED IN BELL SOUTH'S LANGUAGE
18 PLEASE ADDRESS THIS POINT.

19

20 A BellSouth has no objection to removal of the phrase "Except to the extent
21 expressly provided otherwise in this Attachment," from its proposed language
22 in Attachment 2, Section 1.6.1. Although the phrase was at one point deleted
23 from BellSouth's proposed language, through various changes to the
24 Agreement language, it was inadvertently re-entered during one of the
25 revisions.

1 *Item 26; Issue 2-8: Should BellSouth be required to commingle UNEs or*
2 *Combinations with any service, network element or other offering that it is obligated*
3 *to make available pursuant to Section 271 of the Act? (Attachment 2, Section 1.7)*
4

5 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?
6

7 A. Consistent with the FCC's errata to the *Triennial Review Order*, there is no
8 requirement to commingle UNEs or UNE combinations with services, network
9 elements or other offerings made available only pursuant to Section 271 of the
10 1996 Act. Unbundling and commingling are Section 251 obligations.
11 Services not required to be unbundled are not subject to Section 251. When
12 BellSouth provides an item pursuant only to Section 271, BellSouth is not
13 obligated by the requirements of Section 251 to either combine or commingle
14 that item with any other element or service. If BellSouth agrees to do so, it
15 will be done pursuant to a commercial agreement.
16

17 Q. PLEASE EXPLAIN YOUR REFERENCE TO THE FCC'S *TRIENNIAL*
18 *REVIEW ORDER* ERRATA.
19

20 A. In its original *Triennial Review Order* at paragraph 584, the FCC stated: "As a
21 final matter, we require that incumbent LECs permit commingling of UNEs
22 and UNE combinations with other wholesale facilities and services, including
23 any network elements unbundled pursuant to section 271 and any services
24 offered for resale pursuant to section 251(c)(4) of the Act." However, in its
25 errata released September 17, 2003, the FCC specifically amended paragraph

1 584 to delete any reference to section 271. The amended sentence now reads
2 as follows: “As a final matter, we require that incumbent LECs permit
3 commingling of UNEs and UNE combinations with other wholesale facilities
4 and services, including any services offered for resale pursuant to section 251
5 (c)(4) of the Act.”

6

7 In making this change, the FCC correctly noted that there are network elements
8 identified in section 271 that are no longer subject to section 251 unbundling
9 requirements. The FCC has clarified that BellSouth is only obligated to permit
10 commingling between UNEs and UNE combinations (subject to section 251)
11 and wholesale facilities and services.

12

13 Q. DID THE D.C. CIRCUIT’S DECISION, ISSUED ON MARCH 2, 2004,
14 SUPPORT BELL SOUTH’S POSITION ON THIS ISSUE?

15

16 A. Yes. In its discussion of “Section 271 Pricing and Combination Rules”, the
17 D.C. Circuit agreed with the FCC’s determination for checklist items four
18 (loops), five (transport), six (switching) and ten (call-related databases)
19 regarding TELRIC pricing and the duty to combine. First, the Court stated,

20 .. The FCC reasonably concluded that checklist items four, five, six and
21 ten imposed unbundling requirements for those elements independent of
22 the unbundling requirements imposed by §§ 251-252.

23

24 But the FCC also found that the BOCs’ unbundling obligations under the
25 independent checklist items differed in some important respects from

1 those under §§ 251-252. Two such differences are salient here. First, the
2 Commission determined that TELRIC pricing was not appropriate in the
3 absence of impairment; for elements for which unbundling was required
4 only under § 271, the ruling criterion is the §§ 201-02 standard that rates
5 must not be unjust, unreasonable, or unreasonably discriminatory. Order
6 ¶¶ 656-64. Second, the Commission decided that, in contrast to ILEC
7 obligations under § 251, the independent § 271 unbundling obligations
8 didn't include a duty to combine network elements.

9 *USTA v. FCC*, 359 F.3d 554, 588-589 (D.C. Cir. 2004.)

10 Further, the D.C. Circuit stated, "We agree with the Commission that none of
11 the requirements of § 251(c)(3) applies to items four, five, six and ten on the §
12 271 competitive checklist. Of course, the independent unbundling under § 271
13 is presumably governed by the *general* nondiscrimination requirements of §
14 202." *USTA v. FCC*, 359 F.3d at 589. Therefore, it is clear that both the FCC
15 and D.C. Circuit have determined that there is no requirement to commingle
16 UNEs or UNE combinations with services, network elements or other offerings
17 made available only pursuant to Section 271 of the 1996 Act.

18
19 ***Item 27; Issue 2-9: When multiplexing equipment is attached to a commingled***
20 ***circuit, should the multiplexing equipment be billed under the jurisdictional***
21 ***authorization (Agreement or tariff) of the lower or higher bandwidth service?***
22 ***(Attachment 2, Section 1.8.3)***

1 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

2

3 A. When multiplexing equipment is attached to a commingled circuit, the
4 multiplexing equipment should be billed from the same jurisdictional
5 authorization (Agreement or tariff) as the higher bandwidth service. Further,
6 the Central Office Channel Interface (COCI), necessary for the lower level
7 service, will be billed from the same jurisdictional authorization (tariff or
8 Agreement) as the lower bandwidth service

9

10 Multiplexing (e.g., 3/1) is required to aggregate lower-level bandwidth circuits
11 (DS1s) upon a higher-level bandwidth circuit (DS3) or voice grade/digital
12 service upon a DS1. Multiplexing is an option of the higher-level bandwidth
13 circuit and is ordered with it. It is necessary in order to channelize the DS3 for
14 use with lower-level circuits, which is at parity with how retail services are
15 provisioned. Further, each lower-level bandwidth circuit requires a COCI in
16 order to interface with the multiplexer. Therefore, the COCI is ordered with
17 the lower-level bandwidth circuit, which is also at parity with how retail
18 services are provisioned. Thus, the COCI is an option associated with the
19 lower-level bandwidth.

20

21 *Item 30; Issue 2-12: Should the Agreement include a provision declaring that*
22 *facilities that terminate to another carrier's switch or premises, a cell site, Mobile*
23 *Switching Center or base station do not constitute loops? (Attachment 2, Section*
24 *2.1.1.1)*

25

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

2

3 A. Yes, the Agreement should include such a provision. By the FCC's definition,
4 a loop terminates at the end user customer's premises, and not a cell site,
5 carrier's switch/premises, mobile switching center or base station.
6 Specifically, ¶ 368 of the *Triennial Review Order* states, "We find that no
7 requesting carrier shall have access to unbundled inter-network transmission
8 facilities under section 251(c)(3). Thus, assuming *arguendo*, that a CMRS
9 carrier's base station is a type of requesting carrier switch, CMRS carriers are
10 ineligible for dedicated transport from their base station to the incumbent LEC
11 network." [Footnote deleted]

12

13 *Item 35; Issue 2-17: (A) What rates should apply to testing and dispatch performed*
14 *by BellSouth in response to a CLEC trouble report when no trouble is ultimately*
15 *found to exist? (B) What rate should apply when BellSouth is required to dispatch to*
16 *an end user location more than once due to incorrect or incomplete information?*
17 *(Attachment 2, Sections 2.4.3 & 2.4.4)*

18

19 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 35A?

20

21 A. The appropriate charge to apply to testing and dispatch performed by
22 BellSouth in response to a CLEC trouble report when no trouble is ultimately
23 found is the Maintenance of Service Charge from Section 13 3.1 of
24 BellSouth's FCC No. 1 tariff for designed loops or the Trouble Determination
25 Charge from Section A4.3.1 of BellSouth's Tennessee GSST where trouble

1 determination for non-designed loops is covered under premises work charges.
2 These are the rates that BellSouth charges its own retail customers for similar
3 situations.

4
5 Q PLEASE ELABORATE ON BELL SOUTH'S POSITION.

6
7 A. In Sections 2.4.1 and 2 4.2 of the Agreement, the parties have already agreed
8 that the CLEC will be responsible for testing and isolating troubles on loops.
9 The CLEC must test and isolate trouble on the BellSouth portion of a designed
10 or a non-designed unbundled loop before reporting a repair situation to
11 BellSouth via E-Bonding or through the UNE Customer Wholesale
12 Interconnection Network Services (CWINS) Center. Further, BellSouth can
13 request at the time of the report that the CLEC provide the results of the test
14 that indicated a problem on the BellSouth provided loop. BellSouth will then
15 take the actions necessary to repair the loop, if a trouble actually exists in
16 BellSouth's network. Let me make clear that such repair is conducted at no
17 additional cost to the CLEC, because the cost to repair troubles when properly
18 reported and properly isolated to BellSouth's loop, is included in the TELRIC
19 price of that loop. BellSouth will repair loops in a reasonable and
20 nondiscriminatory manner and within time frames that are as favorable as
21 those in which BellSouth repairs similarly situated loops provided via services
22 to its own end users.

23

1 Q. WHAT IS BELLSOUTH'S POSITION ON ITEM 35B?

2

3 A. The applicable tariff charge should apply when BellSouth must dispatch more
4 than once to an end user's location due to incorrect or incomplete information
5 provided by the CLEC. Importantly, as discussed above, had the CLEC
6 provided proper information for the first dispatch, there would have been no
7 charge to the CLEC because the cost of a properly reported and properly
8 isolated repair situation is included in the monthly TELRIC-based loop price.

9

10 *Item 50; Issue 2-32: How should the term "customer," as used in the FCC's EEL*
11 *eligibility criteria rule, be defined? (Attachment 2, Section 5.2.5.2.1-7)*

12

13 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

14

15 A. As previously stated, in light of the D.C. Circuit's Opinion in *USTA II* vacating
16 the FCC's unbundling rules for high capacity transport and high capacity loops
17 that were established in the *Triennial Review Order*, this issue is no longer
18 appropriate for arbitration. An EEL is a loop-transport combination as
19 specified in paragraph 575 of the *Triennial Review Order*.⁴ Again, because of
20 the *USTA II* ruling, there are no FCC rules requiring BellSouth to offer either
21 high capacity transport or high capacity loops as a UNE. As a result thereof,
22 there is no requirement for BellSouth to offer a high capacity EEL (which is a
23 high capacity loop-transport combination). If the D.C. Circuit had not vacated

⁴ The *USTA II* decision did not change the FCC's EEL definition as set forth in the *Triennial Review Order*.

1 such FCC rules, BellSouth's position would be as follows: The term
2 "customer" as used in the FCC's EEL eligibility criteria rule should be defined
3 simply as the end user of an EEL. The high capacity EEL eligibility criteria
4 apply only to end user circuits because a loop is a component of the EEL and
5 the FCC definition of a loop requires that it terminate to an "end-user"
6 customer premises.

7
8 Q. WHAT IS BELL SOUTH'S RATIONALE FOR ITS POSITION?

9
10 A. Again, an EEL is a loop-transport combination as specified in paragraph 575 of
11 the *Triennial Review Order*. Defining a loop, the FCC stated, "Specifically,
12 the local loop network element is a transmission facility between a distribution
13 frame (or its equivalent) in an incumbent LEC central office and the loop
14 demarcation point at an *end-user* customer premises." (fn. 620, emphasis
15 added). An EEL is, therefore, not available to CLECs to serve *any* customer,
16 but only to the CLEC for use in serving *end user* customers. If the CLECs'
17 position were to be adopted, a CLEC could, for instance, be able to order an
18 EEL to serve an ISP even though the ISP is not an end user customer. To
19 avoid confusion, the service eligibility requirements should reflect the actual
20 availability of EELs, rather than use a term, which can be more broadly
21 interpreted.

22
23 ***Item 51; Issue 2-33: (A) How often, and under what circumstances, should***
24 ***BellSouth be able to audit CLEC's records to verify compliance with the high***
25 ***capacity EEL service eligibility criteria? (B) Should there be a notice requirement***

1 *for BellSouth to conduct an audit and what should the notice include? (C) Who*
2 *should conduct the audit and how should the audit be performed? (Attachment 2,*
3 *Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1 & 5.2.6.2.3)*
4

5 Q. WHAT IS BELLSOUTH'S POSITION ON ITEM 51A?
6

7 A. Again, in light of the D.C. Circuit's Opinion in *USTA II* vacating the FCC's
8 unbundling rules for high capacity transport and high capacity loops effective
9 June 16, 2004, this issue is no longer appropriate for arbitration because
10 BellSouth no longer has an obligation to offer a high capacity EEL product. If
11 the D.C. Circuit had not vacated such FCC rules, BellSouth's position would
12 be as follows: BellSouth may, on an annual basis, perform an audit of the
13 CLEC in order to verify compliance with the qualifying service eligibility
14 criteria.
15

16 Q. DOES THE *TRIENNIAL REVIEW ORDER* CONTAIN A "FOR CAUSE"
17 REQUIREMENT AS THE PETITIONERS' LANGUAGE IMPLIES?
18

19 A. No. Contrary to the Petitioners' proposed language, the FCC's Rules do not
20 contain a "for cause" requirement. Adding a "cause" requirement, as the
21 Petitioners are attempting to do, distorts the balance crafted by the FCC
22 between the ILEC's need to avoid gaming by the CLECs and the CLECs'
23 desire to avoid unnecessary audits. Indeed, by stating in paragraph 627 that the
24 incumbent LEC will pay for the audit if the CLEC is found to comply in all
25 material respects with the eligibility criteria, the FCC has created a system

1 where a LEC would not initiate an unfounded audit.

2

3 Further, the Petitioners' language is not only a burdensome addition to the
4 FCC's requirements, it is also totally unnecessary. Paragraph 628 requires the
5 ILEC to reimburse the audited carrier for its costs if the audit finds the carrier's
6 EELs are in compliance. The paragraph goes on to state the reason for this
7 requirement: "We expect that this reimbursement requirement will eliminate
8 the potential for abusive or unfounded audits, so that incumbent LEC (*sic*) will
9 only rely on the audit mechanism in appropriate circumstances." The FCC
10 does not add any requirement to these protections that would indicate a need to
11 show a "cause" for the audit.

12

13 Q WHAT IS BELLSOUTH'S POSITION ON ITEM 51B?

14

15 A Again, in light of the D.C. Circuit's Opinion in *USTA II* vacating the FCC's
16 unbundling rules for high capacity transport and high capacity loops effective
17 June 16, 2004, this issue is no longer appropriate for arbitration because
18 BellSouth no longer has an obligation to offer high capacity EELs. If the D.C.
19 Circuit had not vacated such FCC rules, BellSouth's position on Item 51B
20 would be as follows. The FCC's *Triennial Review Order* contains no
21 requirement that BellSouth give notice of the audit. Further, the *Triennial*
22 *Review Order* contains no requirement that BellSouth identify the specific
23 circuits identified for audit or provide supporting documentation 30 days prior
24 to the audit. In addition, although BellSouth may have evidence for a few
25 circuits, these could easily be part of a pattern of abuse and should serve as

1 “evidence” that other problems may exist. Nonetheless, and as a practical
2 matter, notice will be required in order to implement an audit, but a specific
3 timeframe isn’t necessary as the parties will have to be allowed time to prepare
4 for the audit.

5
6 Q. WHAT IS BELL SOUTH’S POSITION ON ISSUE 51C?

7
8 A. Assuming the *USTA II* decision had not vacated certain FCC unbundling rules
9 and therefore BellSouth had an obligation to provide high capacity EELs,
10 BellSouth’s position on Item 51C would be as follows: The audit shall be
11 conducted by an independent auditor and the auditor must perform its
12 evaluation in accordance with the standards established by the American
13 Institute for Certified Public Accountants (AICPA). The auditor will perform
14 an “examination engagement” and issue an opinion regarding the CLEC’s
15 compliance with the qualifying service eligibility criteria. The independent
16 auditor’s report will conclude whether the CLEC has complied in all material
17 respects with the applicable service eligibility criteria. Consistent with
18 standard auditing practices, such audits require compliance testing designed by
19 the independent auditor, which typically include an examination of a sample
20 selected in accordance with the independent auditor’s judgment.

21
22 BellSouth will select the auditor. As paragraph 627 of the *Triennial Review*
23 *Order* states, “In particular, we conclude that incumbent LECs may obtain and
24 pay for an independent auditor to audit, on an annual basis, compliance with
25 the qualifying service eligibility criteria.” [Footnote deleted] [Emphasis

1 added]. Paragraph 627 goes on to describe the situation in which the CLEC
2 would be responsible for the cost of the audit
3
4 Q THE PETITIONERS' PROPOSED LANGUAGE ATTEMPTS TO ADD
5 ADDITIONAL REQUIREMENTS. PLEASE RESPOND.
6
7 A. The Petitioners language attempts to add four requirements: 1) a third-party,
8 mutually agreed-upon auditor; 2) a mutually agreeable location and timeframe;
9 3) "other requirements" for establishing the independence of the auditor; and,
10 4) a redefinition of "materiality." None of these supposed requirements appear
11 in the FCC's Order.
12
13 Q. PLEASE ADDRESS EACH OF THE PETITIONERS' ADDITIONAL
14 REQUIREMENTS.
15
16 A. First, I address the Petitioners' request for a "third-party, mutually agreed-upon
17 auditor." Next, because they are interrelated, I address as a group the "other
18 requirements" for establishing the independence of the auditor. At Section
19 5.2.6 2, the Petitioners' proposed language advocates a third-party, mutually
20 agreed upon auditor. This is a pointless step designed only as a delaying tactic.
21 Because the *Triennial Review Order* requires, and the parties agree, that the
22 audit should be conducted according to AICPA standards, neither the specific
23 auditor nor the independence of the auditor should be a factor. AICPA
24 standards govern each of these areas. No other requirements are needed. If a
25 CLEC is abusing the service eligibility requirements, these objections provide

1 a simple path to delay the audit indefinitely.

2

3 Second, the Petitioners also call for a mutually agreeable location and
4 timeframe. Again, these provide convenient “outs” for the CLEC to delay an
5 audit, and BellSouth should not be required to expend the resources to force an
6 audit to which it has an unqualified annual right. In addition, the AICPA
7 standards provide widely agreed upon and used procedures for conducting
8 audits. Further specifications here are pointless.

9

10 Finally, the Miriam-Webster Online Dictionary
11 (<http://www.miriamwebster.com/cgi-bin/dictionary>) defines “comply” as, “to
12 conform or adapt one's actions to another's wishes, to a rule, or to necessity”
13 and “material” as, “having real importance or great consequences.” So, read
14 another way, the FCC said the auditor “will conclude whether the competitive
15 LEC [has conformed to the rule] in all [important] respects ...” (Paragraph
16 626). The CLP will have either conformed to the rules in all the important
17 respects or it will not. The Petitioners’ proposal would rewrite the FCC’s
18 statement in a way that simply doesn’t make sense. It would state that if some
19 non-compliance is found, the auditor “will conclude [the extent to which] the
20 competitive LEC [has conformed to the rule] in all [important] respects .. ”
21 (*Triennial Review Order*, Paragraph 626).

22

23 *Item 52; Issue 2-34: Under what circumstances should CLEC be required to*
24 *reimburse BellSouth for the cost of the independent auditor? (Attachment 2, Section*
25 *5.2.8)*

1 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

2

3 A. Again, because of the *USTA II* decision, this issue is no longer appropriate for
4 arbitration. Assuming the *USTA II* decision had not vacated certain FCC
5 unbundling rules and therefore BellSouth had an obligation to provide high
6 capacity EELs, BellSouth's position would be as follows. As expressly set
7 forth in the FCC's *Triennial Review Order*, in the event the auditor's report
8 concludes that the CLEC failed to comply in all material respects with the
9 service eligibility criteria (meaning that CLEC must have complied with each
10 and every one of the service eligibility criteria and actually be entitled to the
11 EEL), the CLEC shall reimburse BellSouth for the cost of the independent
12 auditor

13

14 Q PLEASE ELABORATE ON BELLSOUTH'S POSITION.

15

16 A. Paragraph 593 of the *Triennial Review Order* states: "To ensure that our rules
17 on service eligibility are not gamed in whole or *in part*, we make clear that the
18 service eligibility *criteria* must be satisfied..." (Emphases added) There is no
19 mention of part of criteria or some of the criteria being met. In fact, the FCC
20 specifically states that it wants to prevent even partial gaming of its rules.
21 Allowing a CLEC to qualify while only meeting some of the criteria certainly
22 doesn't prevent partial gaming. The Petitioners apparently believe that the
23 AICPA auditor is the appropriate entity to determine which of the FCC's
24 criteria "material" is and which are not. This is a ridiculous position for the
25 Petitioners to take

1 As further support, Paragraph 597 of the *Triennial Review Order* states: “We
2 conclude that where a requesting carrier satisfies the following three categories
3 of criteria, it is a bona fide provider of qualifying services and thus is entitled
4 to order high-capacity EELs” The FCC states that the carrier must satisfy all
5 three categories, not just some of them, in order to qualify for high-capacity
6 EELs.

7
8 It is important to remember that the purpose of an audit is to determine if a
9 CLEC really meets the criteria for providing a high-capacity EEL. BellSouth’s
10 position is that the FCC requires the CLEC to repay BellSouth for the cost of
11 the auditor in the event the CLEC “failed to comply in all material respects
12 with the service eligibility requirements” (Paragraph 627) This means that the
13 CLEC being audited must comply in all material respects with the service
14 eligibility requirements or it must repay BellSouth for the cost of the auditor.

15
16 Q. IS THE PETITIONERS’ POSITION ON THIS ISSUE REASONABLE?

17
18 A. No. It is BellSouth’s understanding that the Petitioners believe that a CLEC is
19 not required to repay BellSouth for the cost of the auditor unless the CLEC
20 does not comply with any of the service eligibility requirements. In other
21 words, if an EEL complies with only one of the service eligibility criterion,
22 then the CLEC shouldn’t have to pay for the audit Petitioners’ believe a
23 CLEC is only liable for the cost of the auditor if the CLEC completely fails to
24 comply with any part of the EELs requirements. This is not a reasonable
25 interpretation of the FCC’s statements This position means that, although the

1 CLEC is not entitled to the EEL and the EEL must either be disconnected or
2 converted to another service, the CLEC bears no responsibility, financial or
3 otherwise, for having ordered an ineligible EEL in the first instance
4

5 *Item 56; Issue 2-38: Should BellSouth's obligation to provide signaling link*
6 *transport and SS7 interconnection at TELRIC-based rates be limited to*
7 *circumstances in which BellSouth is required to provide and is providing to CLEC*
8 *unbundled access to Local Circuit Switching? (Attachment 2, Sections 7.2 & 7.3)*
9

10 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?
11

12 A. As explained below, given the D.C. Circuit's vacatur of the FCC's unbundling
13 rules regarding local switching, this issue is no longer appropriate for
14 arbitration. If the D.C. Circuit had not vacated such FCC rules, BellSouth's
15 position would be as follows: Yes, BellSouth's obligation to provide
16 unbundled signaling at TELRIC rates applies only where BellSouth is required
17 to provide and is providing unbundled access to Local Circuit Switching. The
18 FCC's *Triennial Review Order* clearly states:

19 In the instances in which incumbent LECs will be required to provide
20 access to switching as a UNE, carriers purchasing the switching UNE
21 must also gain access to incumbent LEC signaling. In all other cases,
22 however, we determine that there are sufficient alternatives in the
23 market available to incumbent LEC signaling networks and competitive
24 LECs are no longer impaired without access to such networks as UNEs
25 for all markets. ¶ 544 [Footnote deleted] [Emphasis added]

1 This determination was affirmed by the D.C. Circuit.⁵ Put another way, the
2 FCC determined that an ILEC must provide unbundled signaling in certain
3 limited circumstances [where the ILEC must provide unbundled local
4 switching] Because of the *USTA II* vacatur, those certain limited
5 circumstances where an ILEC must offer unbundled signaling no longer exist.
6 As such, this issue is no longer appropriate for arbitration. Therefore, as stated
7 in BellSouth's proposed language (Attachment 2, Section 7.2) "BellSouth shall
8 only provide unbundled access to BellSouth Switched Access (SWA) 8XX
9 Toll Free Dialing Ten Digit Screening Service, Line Information Database
10 (LIDB), Signaling, Signaling Link Transport, Signaling Transfer Points, SS7
11 AIN Access, Service Control Point/Databases, LNP, SS7 Network
12 Interconnection, and Calling Name (CNAM) Database Service at the prices set
13 forth herein [Attachment 2] where BellSouth is required to provide and is
14 providing unbundled access to local circuit switching...." [Emphasis added]

15
16 Q. HOW DOES BELL SOUTH'S POSITION IMPACT ITS OBLIGATIONS TO
17 PROVIDE COST-BASED LOCAL INTERCONNECTION?

18
19 A BellSouth fully acknowledges its obligations under sections 251(a) and
20 251(c)(2) of the 1996 Act Allow me to clarify BellSouth's position with
21 regard to SS7 interconnection. First, the signaling messages associated with
22 local call transport and termination (that travel over SS7 signaling links) would
23 be billed at the cost-based rates contained in Exhibit A to Attachment 3 of the

⁵ *USTA II*, 359 F.3d at 587

1 Agreement, unless the parties agree to a bill and keep arrangement. In the
2 proposed Agreement, the parties have indeed agreed to use bill and keep for
3 these local messages. BellSouth also offers facilities-based CLECs
4 interconnection to its signaling network. This interconnection is in the form of
5 signaling links that connect either a CLEC's local or tandem switching system
6 with a BellSouth STP (using an A Link) or connection of the two companies'
7 STPs (using a B link). As in the case of other interconnection facilities that
8 carry mixed traffic, the CLEC is required to provide BellSouth with a factor
9 for local traffic. BellSouth will apply that factor to the signaling link in order
10 that the CLEC is billed for the local portion of the link at the applicable
11 TELRIC rates, which are contained in Attachment 3 of the Agreement. The
12 remainder of the facility, or that portion used for non-local traffic, would be
13 billed at the tariffed rates.

14

15 ***Item 57; Issue 2-39: (A) Should the parties be obligated to perform CNAM queries***
16 ***and pass such information on all calls exchanged between them, including cases***
17 ***that would require the party providing the information to query a third party***
18 ***database provider? (B) If so, which party should bear the cost? (Attachment 2,***
19 ***Section 7.4)***

20

21 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 57A?

22

23 A. First, this issue (including all subparts) is not appropriate for arbitration in this
24 proceeding because it involves a request by the Petitioners that is not
25 encompassed within BellSouth's obligations pursuant to Section 251 of the

1 1996 Act BellSouth is only legally obligated to provide access to its CNAM
2 database as required by the FCC There is no legal obligation on either Party's
3 part to query other such databases If BellSouth does query a third party
4 database, it will only be done pursuant to a separate agreement. If BellSouth
5 terminates an agreement with a third party provider, BellSouth will provide
6 notice to CLECs via a Carrier Notification Letter. Importantly, CLECs will be
7 provided with the same Caller ID information that BellSouth provides to its
8 retail customers. If BellSouth no longer queries a third party database for
9 CNAM information, BellSouth's retail customers are impacted as well as
10 CLECs.

11

12 Q WHAT IS BELLSOUTH'S POSITION ON ITEM 57B?

13

14 A If BellSouth elects to perform this function for the CLECs, it should be
15 pursuant to separately negotiated rates, terms and conditions. Again, this
16 request is not appropriately raised as an issue in a section 251 arbitration

17

18 *Item 58; Issue 2-40: Should LIDB charges be subject to application of*
19 *jurisdictional factors? (Attachment 2, Section 9.3.5)*

20

21 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

22

23 A. Yes, LIDB charges should be subject to jurisdictional factors. Access to LIDB
24 "supports carrier provision of such services as Originating Line Number
25 Screening, Calling Card Validation, Billing Number Screening, Calling Card

1 Fraud and Public Telephone Check. These services are provided in
2 conjunction with local exchange, toll and other telecommunications services.”
3 (Footnote 1693 *Triennial Review Order*). Only through jurisdictional factors
4 would the proper rates be applied to the various call volumes.
5

6 Q. PLEASE PROVIDE SUPPORT FOR BELL SOUTH'S POSITION.
7

8 A. LIDB charges should be jurisdictionalized based on the locations of the
9 originating points and terminating points of the corresponding LIDB queries
10 within the SS7 network. If the originating point and terminating point for a
11 LIDB query are both located within the same local calling area, the query is a
12 local query. If the originating point is located outside of the local calling area
13 of the terminating point but within the same state, the query is an intrastate
14 query. If the two points are located in different states, the query is an interstate
15 query. Because no method has been developed to accurately determine the
16 actual jurisdiction of LIDB queries, all CLECs who prescribe to BellSouth's
17 LIDB service are requested by BellSouth to provide PIU (Percent Interstate
18 Usage) and PCLU (Percent Local Usage) factors. These factors determine
19 how the customer's LIDB billing will be jurisdictionalized between interstate,
20 intrastate, and local. If a CLEC has determined that all of their LIDB queries
21 are truly local, the CLEC should provide BellSouth with the following factors:
22 PIU=0 and PCLU=100. These factors will result in all of the CLEC's
23 LIDB charges being billed as Local.
24

25 *Item 62; Issue 3-3: What provisions should apply regarding failure to provide*

1 *accurate and detailed usage data necessary for the billing and collection of access*
2 *revenues? (Attachment 3, Sections 10.7.4 – NSC & NVX; 10.12.4 – XSP)*

3

4 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

5

6 A. BellSouth should not be liable where a third party has failed to provide
7 BellSouth with data in a way that allows BellSouth to provide such data to the
8 CLEC. The Petitioners', on the other hand, believe that BellSouth should be
9 financially responsible irrespective of whether or not a third party has failed to
10 provide the appropriate data.

11

12 In the event that either the CLEC or BellSouth was provided the accurate
13 switched access detailed usage data in a manner that allowed that Party to
14 generate and provide such data to the other Party in a reasonable timeframe
15 and the other Party is unable to bill and/or collect access revenues due to the
16 sending Party's failure to provide such data within said time period, then the
17 sending Party shall be liable to the other Party in an amount equal to the
18 unbillable or uncollectible revenues. Each company will provide complete
19 documentation to the other to substantiate any claim of such unbillable or
20 uncollectible revenues.

21

22 The CLECs want the local market to be open to competition, thus owned by
23 everyone, but at the same time, they want BellSouth to be the police of the
24 network and enforce proper routing and records exchange That is simply not
25 within our capability Therefore, BellSouth's proposed language states we will

1 be liable where we have received all the appropriate data and have failed to
2 provide that data to the CLEC. This is a reasonable position given the lack of
3 control BellSouth has in these circumstances.

4

5 Q. PLEASE PROVIDE ADDITIONAL SUPPORT FOR BELL SOUTH'S
6 POSITION.

7

8 A. As noted above, BellSouth should not be liable where a third party has failed to
9 provide BellSouth with data in a way that allows BellSouth to provide such
10 data to the CLEC. Perhaps the following example would be useful. The FCC
11 determined upon the introduction of Local Number Portability ("LNP") that in
12 the instance that an IXC routed a call to a CLEC via an ILEC, only the ILEC
13 would be required to perform the LNP query. In many instances, a CLEC
14 ports a telephone number from BellSouth. Since the IXC is not required to
15 perform the LNP query to identify the owner of that telephone number, they
16 route calls destined for that ported telephone number to the BellSouth End
17 Office where the telephone number used to reside, instead of to the appropriate
18 BellSouth Tandem Office. BellSouth then queries the LNP database and sends
19 the call from the BellSouth End Office to the CLEC for termination to the
20 CLEC's end user. The BellSouth Tandem Offices are designed to record and
21 generate records that identify the IXC to the CLEC so that the CLEC can bill
22 the IXC for terminating switched access. However, the BellSouth End Offices
23 do not have the capability to generate and send these records thus, when an

1 IXC routes a call to the BellSouth end office that is really destined for a CLEC,
2 the call is "re-originated" by BellSouth at the End Office. This causes the
3 CLEC to identify the call as BellSouth-originated. Prior to the implementation
4 of LNP, there was no need for the BellSouth End Office to produce records for
5 this type of traffic

6

7 This example reflects an industry problem that the Ordering and Billing
8 Forum, which is comprised of CLECs, IXCs, etc., determined was not large
9 enough to warrant the development of a solution. Nevertheless, BellSouth
10 implemented a solution (as of September 2003) that allows for the generation
11 of the necessary records. The point is, BellSouth should not be penalized for
12 an industry problem or for instances where a third party strips the information
13 in such a way that BellSouth cannot pass a record to the CLEC.

14

15 Q. THE PETITIONERS SET FORTH A TIME PERIOD OF 90 DAYS AFTER
16 THE RECORDING DATE AS THE TIME PERIOD THAT THE PARTY
17 FAILING TO SEND DATA WITHIN SAID TIME PERIOD WOULD BE
18 LIABLE FOR UNBILLED OR UNCOLLECTIBLE REVENUE. PLEASE
19 RESPOND.

20

21 A Ninety (90) days is generally acceptable as a time period in this circumstance
22 However, BellSouth cannot allow this to be the only criteria for determining
23 BellSouth's liability If a technical issue requires BellSouth to provide records

1 past 90 days and BellSouth provides notice to the CLEC so that the CLEC can
2 notify the carriers that they will be receiving a late bill, then BellSouth should
3 not be liable. BellSouth cannot be responsible for the actions of third parties.
4 Again, where data is not provided to BellSouth, then BellSouth should not be
5 liable.

6
7 ***Item 63; Issue 3-4: Under what terms should CLEC be obligated to reimburse***
8 ***BellSouth for amounts BellSouth pays to third party carriers that terminate***
9 ***BellSouth transited/CLEC originated traffic? (Attachment 3, Sections 10.10.6 –***
10 ***KMC; 10.8.6 – NSC & NVX; 10.13.5 – XSP)***

11
12 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

13
14 A. Both BellSouth and the Petitioners appear to agree that the CLECs should
15 reimburse BellSouth for third party charges when such charges are covered by
16 the agreement between BellSouth and the terminating carrier. However,
17 BellSouth's position is that there may be instances where the CLECs need to
18 pay third party charges for which there are no specific obligations in the
19 agreement. In the event that a terminating third party carrier imposes on
20 BellSouth any charges or costs for the delivery of Transit Traffic originated by
21 a CLEC, the CLEC should reimburse BellSouth for all charges paid by
22 BellSouth.

23
24 Q. PLEASE PROVIDE THE RATIONALE FOR BELL SOUTH'S POSITION

1 A. In instances where a CLEC originates a call and BellSouth, as the transit
2 provider, delivers that call to an Independent Company (“ICO”), certain ICOs
3 charge BellSouth terminating access even though BellSouth is not the toll
4 provider for the originating CLEC’s end user and is not receiving toll revenue
5 from that end user. Some ICOs have “Primary Carrier Plan” agreements with
6 BellSouth for jointly provided intraLATA toll services, which were executed
7 prior to the 1996 Act and, thus, do not address transit traffic because none
8 existed at that time. BellSouth has attempted to renegotiate these agreements
9 and, in some cases, BellSouth has requested that the ICOs cease billing
10 BellSouth for such traffic because “transit traffic” is not covered by the
11 agreement between the ICO and BellSouth.

12
13 Q. PLEASE EXPLAIN WHY BELLSOUTH IS NOT REQUIRED TO ACT AS
14 A TRANSIT SERVICES PROVIDER FOR CLECS OR ANY OTHER
15 CARRIERS.

16
17 A. Although BellSouth clearly has an obligation to interconnect with other
18 carriers under section 251(c)(2) of the 1996 Act, it is BellSouth’s position that
19 ILECs do not have a duty to provide transit services for other carriers. Indeed,
20 in its *Virginia Opinion and Order*⁶ released July 17, 2002, the FCC supported

⁶ See *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(3)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *In the Matter of Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(3)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Arbitration*, CC Docket No. 00-249, and *In the Matter of Petition of AT&T Communications of Virginia Inc. Pursuant to Section 252(3)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State*

1 BellSouth's position by stating as follows:

2 We reject AT&T's proposal because it would require Verizon to
3 provide transit service at TELRIC rates without limitation. While
4 Verizon as an incumbent LEC is required to provide interconnection at
5 forward-looking cost under the Commission's rules implementing
6 section 251(c)(2), the Commission has not had occasion to determine
7 whether incumbent LECs have a duty to provide transit service under
8 this provision of the statute, nor do we find clear Commission
9 precedent or rules declaring such a duty. In the absence of such a
10 precedent or rule, we decline, on delegated authority, to determine for
11 the first time that Verizon has a section 251(c)(2) duty to provide
12 transit service at TELRIC rates. Furthermore, any duty Verizon may
13 have under 251(a)(1) of the Act to provide transit service would not
14 require that service to be priced at TELRIC. ¶ 117 [Footnotes deleted]
15 [Emphasis added]

16
17 Although the FCC made a similar finding at ¶ 119 of the *Virginia Opinion and*
18 *Order* regarding WorldCom, the FCC made an additional finding regarding
19 Verizon's duty to serve as a billing intermediary, stating as follows:

20 WorldCom's proposal would also require Verizon to serve as a billing
21 intermediary between WorldCom and third-party carriers with which it
22 exchanges traffic transiting Verizon's network. We cannot find any

1 clear precedent or Commission rule requiring Verizon to perform such
2 a function. Although WorldCom states that Verizon has provided such
3 a function in the past, this alone cannot create a continuing duty for
4 Verizon to serve as a billing intermediary for the petitioners' transit
5 traffic. We are not persuaded by WorldCom's arguments that Verizon
6 should incur the burdens of negotiating interconnection and
7 compensation arrangements with third-party carriers. Instead, we agree
8 with Verizon that interconnection and reciprocal compensation are the
9 duties of all local exchange carriers, including competitive entrants.

10 ¶ 119 [Footnotes deleted]

11
12 Consistent with the 1996 Act and the FCC's *Virginia Opinion and Order*,
13 BellSouth is only willing to agree to provide a transiting function where it can
14 recover its costs for the use of its network in switching and transporting the
15 CLEC's traffic, and where BellSouth is not responsible for any compensation
16 to the terminating carrier.

17
18 Q. HAS A SIMILAR ISSUE ARISEN IN TENNESSEE WITH RESPECT TO
19 COMMERCIAL MOBILE RADIO SERVICE ("CMRS") PROVIDERS?

20
21 A. Yes. BellSouth has been forced to litigate regarding the payment of charges
22 for the ICOs' terminating CMRS-originated transit traffic under a similar
23 situation in Tennessee. Traffic originated by CLECs that transits BellSouth's
24 network creates the same issues as that originated by CMRS providers.

1 Indeed, in its *Order Denying Motion*⁷ dated April 12, 2004, the Authority
2 found that BellSouth is not a necessary and indispensable party to the
3 arbitration because:

4 [w]hether the exchange of traffic between two such carriers is direct or
5 indirect via the BellSouth network, explicit in federal law is the duty of
6 each Coalition member to each CMRS provider, as the requesting
7 carrier, to arrange for reciprocal compensation. To this end, federal
8 law imposes no compensation obligations on any third party, including
9 BellSouth over whose network the traffic is being exchanged. [pp. 7-8]
10

11 BellSouth is not the originating carrier for this transit traffic, therefore there is
12 no basis to hold BellSouth responsible for charges for termination of such
13 traffic. However, because the ICOs have not yet executed agreements with the
14 originating carriers, the ICOs have taken the position that BellSouth must pay
15 for termination of the traffic transited by BellSouth. While BellSouth believes
16 the ICOs' position to be inconsistent with the 1996 Act, BellSouth is aware
17 that the ICOs have raised these claims, at least with respect to CMRS
18 providers, and that they have not yet been finally resolved.
19

20 Consequently, BellSouth is aware of this issue with the ICOs, and BellSouth
21 must ensure that its new contracts protect it against being drawn into the
22 middle of a dispute between the ICOs and any carrier sending traffic to the
23 ICOs' end users over BellSouth's network. Such protection ensures that

⁷ See *Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, etc.*, Consolidated Docket
No 03-00585 *Order Denying Motion*, 04/12/04, pp 7-8

1 BellSouth will not be financially penalized for its good business practice of
2 delivering – not blocking – transit traffic. It is the responsibility of each
3 carrier, pursuant to Section 251(a) of the Act, to interconnect directly or
4 indirectly with all other carriers. The CLECs certainly may opt to interconnect
5 with the ICOs indirectly if an intermediary carrier, such as BellSouth, is
6 willing to provide transiting functions. However, it is still the obligation of the
7 originating carrier to make arrangements with the terminating carrier with
8 respect to delivery of and compensation for such transit traffic. BellSouth is
9 unwilling to provide a transit function and to accept the financial obligation of
10 compensating the terminating carrier. Such an outcome is not required by the
11 1996 Act, and is clearly contrary to reasonable business practices.
12 Furthermore, although it has been suggested that BellSouth should simply
13 refuse to pay ICOs for such traffic, this solution is not reasonable.

14

15 Q. DOES BELL SOUTH REVIEW AND DISPUTE THIRD PARTY BILLS IN
16 THE SAME MANNER THAT IT REVIEWS AND DISPUTES BILLS FOR
17 ITS OWN TRAFFIC FROM THE SAME PARTY?

18

19 A. Yes. BellSouth reviews, disputes and pays third party invoices in a manner
20 that is at parity with its own practices for reviewing, disputing and paying such
21 invoices. If BellSouth believes the ICO has inappropriately billed BellSouth
22 for calls, BellSouth will dispute such charges and seek reimbursement from the
23 ICO. BellSouth does review, dispute and pay ICO bills for the CLECs' transit
24 traffic in the same manner as it does for its own traffic in Tennessee.
25 However, by insisting that BellSouth be responsible for disputing bills of all

1 ICOs for all CLEC and CMRS transit traffic, the CLECs are attempting to
2 impose on BellSouth the obligation to become embroiled in the middle of
3 disputes between CLECs and ICOs – disputes that would never occur if the
4 CLECs would make arrangements with terminating ICOs for termination of
5 the CLEC originated traffic, as the 1996 Act requires.

6

7 ***Item 64; Issue 3-5: While a dispute over jurisdictional factors is pending, what***
8 ***factors should apply in the interim? (Attachment 3, Sections 10.7.4.2 – KMC;***
9 ***10.5.5.2 – NSC; 10.5.6.2 – NVX; 10.10.6 - XSP)***

10

11 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

12

13 A. In the event that negotiations and audits fail to resolve disputes between the
14 Parties regarding the appropriate factor, either Party may seek Dispute
15 Resolution as set forth in the General Terms and Conditions. While a dispute
16 over jurisdictional factors is pending, factors calculated by the terminating
17 Party should be utilized, unless the Parties mutually agree otherwise

18

19 It is important to recognize that this is not a one way issue and, therefore,
20 requires a balanced approach. BellSouth's position gives the terminating party
21 (either the CLEC or BellSouth) the right to decide which factors should be
22 used until a dispute is resolved

23

24 Q. PLEASE PROVIDE RATIONALE FOR BELL SOUTH'S POSITION

25

1 A. It is common practice that each party submits factors to the other Party that
2 reflect the jurisdiction of its traffic. For instance, CLECs submit factors to
3 BellSouth that indicate the percentage of that CLEC's originated traffic that is
4 Local, Interstate, or Intrastate. The section preceding the language at issue
5 states that a Party may use its own equipment to determine the jurisdiction of
6 traffic originated by the other Party and may use those factors in lieu of the
7 factors submitted by the originating Party. For instance, when the CLEC
8 submits its factors to BellSouth, BellSouth may use its own technology to
9 determine the jurisdiction of BellSouth's traffic, and then use that information
10 in lieu of the CLEC's submitted factors and vice versa. In some instances, the
11 terminating party may disagree with the originating party's calculated factor,
12 and the Parties will enter into discussions to resolve which factors are
13 appropriate. During such discussions, the terminating party should have the
14 option to use its factors in the interim.

15
16 It is important to understand that BellSouth's approach does not determine
17 what amount is actually owed. The approach is strictly for calculation
18 purposes. BellSouth's approach suggests use of the terminating party's factors
19 because using those factors makes clear what money is at issue. The
20 terminating party initiates the "dispute" by notifying the originating party that
21 calculation of the originating party's factors differ from what the originating
22 party submitted. Thus, if the originating party disagrees with the terminating
23 party's calculation, it makes sense to use the terminating party's factors, which
24 will drive billing based on the terminating party's calculations. This will
25 clearly set forth what money is in dispute (the difference between what the

1 originating party billed under their factors and what they would then be billed
2 under the terminating party's calculated factors).

3
4 ***Item 65; Issue 3-6: Should BellSouth be allowed to charge the CLEC a Tandem***
5 ***Intermediary Charge for the transport and termination of Local Transit Traffic and***
6 ***ISP-Bound Transit Traffic? (Attachment 3, Sections 10.10.1 – KMC; 10.8.1 – NSC;***
7 ***10.13 - XSP)***

8
9 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

10
11 A. First, BellSouth is not required to provide a transit traffic function because it is
12 not a Section 251 obligation under the 1996 Act. Therefore, should BellSouth
13 agree to provide the transit traffic function, it should be at rates, terms and
14 conditions contained in a separately negotiated agreement. However, if
15 BellSouth agrees to include this function in its Agreement, that fact should not
16 be used to penalize BellSouth and impose rates for a service that, pursuant to a
17 separate agreement, the Authority would not even be privy to. BellSouth
18 should be able to impose upon a CLEC a Tandem Intermediary Charge for
19 local transit and ISP-bound transit traffic because BellSouth. (1) is not
20 obligated to provide the transit function to a CLEC; and (2) the CLEC has the
21 ability, and, indeed, the right pursuant to Sections 251(a) & (b) of the 1996
22 Act, to request direct interconnection to other carriers. Interestingly, many
23 CLECs use the transit function because they find it more efficient and
24 economical than direct trunking. However, they want this more efficient, more
25 economical alternative at a cheaper rate, like TELRIC, or at no rate at all

1 Additionally, BellSouth incurs costs beyond those for which the Authority
2 ordered TELRIC rates were designed to address, such as the costs of sending
3 records to the CLECs identifying the originating carrier. BellSouth does not
4 currently charge the CLECs for these records and does not recover those costs
5 in any other form

6
7 ***Item 67; Issue 3-8: Should compensation for the transport and termination of ISP-***
8 ***bound Traffic be subject to a cap? (Attachment 3, Sections 10.2, 10.3 – XSP)***

9
10 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

11
12 A Pursuant to the FCC's ISP Order on Remand⁸, the compensation regime
13 including rate and growth caps shall remain in place until the FCC issues a
14 subsequent order.

15
16 Q. HOW DOES THE FCC'S ISP ORDER ON REMAND ADDRESS THIS
17 ISSUE?

18
19 A. First, the FCC was quite clear in paragraph 77 of its Order on Remand when it
20 stated: "Our primary goal at this time is to address the market distortions
21 under the current intercarrier compensation regimes for ISP-bound traffic "
22 After addressing what it explained as expectations that CLECs could continue
23 to receive reciprocal compensation revenue based on several state commission

⁸ *Order on Remand and Report and Order* in CC Docket No. 96-98 & CC Docket No. 99-68, order No. FCC 01-131 (Released April 27, 2001) (*Order on Remand*)

1 orders, the FCC stated as follows.

2 We believe it appropriate, in tailoring an interim compensation
3 mechanism, to take those expectations into account while
4 simultaneously establishing rates that will produce more accurate price
5 signals and substantially reduce current market distortions. Therefore,
6 pending our consideration of broader intercarrier compensation issues
7 in the NPRM, we impose an interim intercarrier compensation regime
8 for ISP-bound traffic that serves to limit, if not end, the opportunity for
9 regulatory arbitrage, while avoiding a market-disruptive 'flash cut' to a
10 pure bill and keep regime. The interim regime we establish here will
11 govern intercarrier compensation for ISP-bound traffic until we have
12 resolved the issues raised in the intercarrier compensation NPRM."

13 [Emphasis added].

14 In further describing the interim mechanism in paragraph 78, the FCC
15 described a cap on the reciprocal compensation rate, as well as a cap on the
16 total ISP-bound minutes for which a LEC would receive compensation.

17

18 Based on the foregoing, there can be no doubt that the FCC intends that the
19 current caps remain in place until it has resolved the broader intercarrier
20 compensation issues, which it has yet to do

21

22 *Item 73; Issue 3-14: Under what conditions should CLEC be permitted to bill*
23 *BellSouth based on actual traffic measurements, in lieu of BellSouth-reported*
24 *jurisdictional factors? (Attachment 3, Sections 10.10.4, 10.10.5, 10.10.6 & 10.10.7 –*
25 *XSP)*

1 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

2

3 A. A CLEC may have the option to bill BellSouth based on its own actual traffic
4 measurements for services that the CLEC has valid authorization to bill
5 BellSouth in the form of tariffs, interconnection agreements, or other
6 contractual authority. Prior to the CLEC implementing billing based on its
7 own traffic measurements, however, the CLEC and BellSouth will mutually
8 agree that the traffic measurement system employed by the CLEC, or at the
9 direction of the CLEC, accurately measures traffic and assigns the correct
10 jurisdiction in accordance with the Agreement and applicable underlying FCC
11 rules. BellSouth shall have, at its option, the right to audit the CLEC
12 measurement system periodically

13

14 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

15

16 A. Yes.

17

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF ERIC FOGLE
3 BEFORE THE TENNESSEE REGULATORY AUTHORITY
4 DOCKET NO. 04-00046
5 JUNE 25, 2004
6
7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR
9 BUSINESS ADDRESS.
10
11 A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc.,
12 as a Director in BellSouth's Interconnection Operations Organization.
13 My business address is 675 West Peachtree Street, Atlanta, Georgia
14 30375.
15
16 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR
17 BACKGROUND AND EXPERIENCE.
18
19 A. I attended the University of Missouri in Columbia, where I earned a
20 Master of Science in Electrical Engineering Degree in 1993 and Emory
21 University in Atlanta, where I earned a Master of Business
22 Administration degree in 1996. After graduation from the University of
23 Missouri in Columbia, I began employment with AT&T as a Network
24 Engineer, and joined BellSouth in early 1998 as a Business
25 Development Analyst in the Product Commercialization Unit. From July

1 2000 through May 2003, I led the Wholesale Broadband Marketing
2 group within BellSouth. I assumed my current position in June 2003.
3 First, as a Business Analyst, and then as the Director of the Wholesale
4 Broadband Marketing Group and continuing in my current position, I
5 have been, and continue to be, actively involved in the evolution and
6 growth of BellSouth's network including provisions for accommodating
7 Digital Subscriber Line ("DSL") based services as well as the underlying
8 technology.

9
10 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

11
12 A. The purpose of my testimony is to provide BellSouth's position on
13 numerous unresolved issues in this proceeding. Specifically, I will
14 address the following issues, in whole or in part: Issues 31 (2-13), 33
15 (2-15), 36 (2-18), 37 (2-19), 38 (2-20), 45 (2-27), 46 (2-28), 74 – 77 (4-1
16 through 4-4), and Issues 80 – 82 (4-7 through 4-9).

17
18 ***Issue 31 (2-13): Should the Agreement require Competitive Local***
19 ***Exchange Carriers ("CLECs") to purchase the entire bandwidth of a***
20 ***Loop, even in cases where such purchase is not required by Applicable***
21 ***Law? (Attachment 2, Section 2.1.1.2)***

22
23 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

24
25 A. Joint Petitioners should be required to purchase the entire bandwidth

1 when they purchase an unbundled loop. The Federal Communications
2 Commission's ("FCC's") Triennial Review Order ("TRO") specifically
3 rejected the Joint Petitioners' efforts to separate the bandwidth into
4 upper and lower bands. Paragraph 270 of the TRO states, "We
5 conclude that unbundling the low frequency portion of the loop is not
6 necessary to address the impairment faced by requesting carriers
7 because we continue (through our line splitting rules) to permit a
8 narrowband service-only competitive LEC to take full advantage of an
9 unbundled loop's capabilities by partnering with a second competitive
10 LEC that will offer xDSL service."

11

12 Q. WHAT IS THE RATIONALE FOR BELL SOUTH'S POSITION?

13

14 A. Because BellSouth is not obligated to unbundle the low frequency
15 portion of the loop, the CLECs' request to not be required to purchase
16 the entire bandwidth of the loop is contrary to the FCC's decision in its
17 TRO, and beyond the scope of a Section 251 arbitration.

18

19 Q. DO YOU AGREE WITH THE CLECS' RATIONALE THAT THEY
20 SHOULD NOT BE REQUIRED TO PURCHASE THE ENTIRE
21 BANDWIDTH OF A LOOP IN CASES WHERE APPLICABLE LAW
22 PERMITS LINE SHARING, LINE SPLITTING, OR THE ABILITY OF A
23 CUSTOMER TO RETAIN BELL SOUTH XDSL – BASED SERVICES
24 WHILE PURCHASING VOICE SERVICES FROM A CLEC USING AN
25 UNBUNDLED LOOP?

1 A. No, as I stated above, Joint Petitioners should be required to purchase
2 the entire bandwidth of the unbundled loops they purchase The FCC's
3 TRO in Paragraph 270 could not be clearer as it found that CLECs are
4 not impaired without access to the high frequency portion of ILEC's
5 voice loops:

6
7 As an initial matter, we disagree with the Commission's prior
8 finding that competitive LECs are impaired without unbundled
9 access to the HFPL [that is, the high frequency portion of the
10 loop] because purchasing a stand-alone loop would be too costly
11 for carriers seeking to offer a broadband service.¹
12

13 Joint Petitioners are incorrect that they are entitled to purchase the
14 HFPL for line sharing, except during the transition period for line
15 sharing, which ends October 1, 2004. Even during the transition period,
16 the FCC has made clear that CLECs are not buying a portion of the
17 loop, but, rather, they have "access to the HFPL":

18
19 Accordingly, we require incumbent LECs to provide access to
20 the high frequency portion of the loop based on the criteria for
21 presumed acceptability for the deployment that we establish
22 below.²
23

24 Line splitting allows one CLEC to purchase a loop to provide both voice
25 service and broadband data service or the CLEC may share the loop
26 with a data LEC to provide broadband data service over the HFPL. The

¹ TRO ¶258 (emphasis added)

² Federal Communications Commission's (FCC) *Line-sharing Order* ¶68
(emphasis added)

1 FCC has ruled

2

3

4

5

6

7

We find that allowing competitive LECs unbundled access to the whole loop and to line splitting but not requiring the HFPL to be separately unbundled creates better competitive incentives than the alternatives.³

8

9

10

11

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21

Neither the FCC nor the Tennessee Regulatory Authority ("TRA") rules allow an end-user customer or a CLEC "to retain BellSouth xDSL-based services while purchasing voice services from a CLEC using a UNE loop", as the petitioners suggest.⁴ Even in those states where the state commissions have ordered BellSouth to continue to provide DSL services when BellSouth is no longer the voice provider, the CLEC, in that situation, is not purchasing a portion of the loop. No state has issued any such order. Thus, Joint Petitioners' position is untenable that they should be allowed to purchase a portion of a loop. In addition, BellSouth's position regarding the availability of BellSouth provided DSL services over CLEC provided voice services will be further addressed in my testimony on issue 46.

³ TRO ¶260 (emphasis added)

⁴ FCC Line Sharing Reconsideration Order ¶16.

Memorandum Opinion and Order, *Application by SBC Communications Inc , et al , Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Texas*, 15 FCC Rcd 18354 (2000)

1 Q. WHY IS ISSUE 31 NOT APPROPRIATE FOR ARBITRATION?

2

3 A. The purpose of this arbitration is to resolve disputed language in a
4 Section 251 Interconnection Agreement ("ICA"). The FCC has
5 determined that purchasing the upper frequency portion of a loop is not
6 a Section 251 obligation, and therefore, should not be included in this
7 arbitration.

8

9 ***Item 33; Issue 2-15: Is unbundling relief provided under FCC Rule***
10 ***319(a)(3) applicable to Fiber-to-the-Home Loops ("FTTH") deployed prior***
11 ***to October 2, 2003? (Attachment 2, Section 2.2.3)***

12

13 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

14

15 A. The unbundling relief provided under FCC Rule 51.319(a)(3) is
16 applicable to FTTH loops deployed prior to October 2, 2003. The FCC
17 found that, for FTTH, there is no impairment on a national basis and
18 thus did not make this decision contingent upon a deployment date.

19

20 Q. IS BELL SOUTH'S POSITION SUPPORTED BY THE TRO?

21

22 A. Yes. In Paragraph 273 of the TRO, the FCC specifically states that
23 "[o]nly in fiber loop overbuild situations where the incumbent LEC elects
24 to retire existing copper loops must the incumbent LEC offer unbundled
25 access to those fiber loops, and in such cases the fiber loops must be

1 unbundled for narrowband services only. Incumbent LEC's do not have
2 to offer unbundled access to newly deployed or 'greenfield' fiber loops."
3 These two sentences must be reviewed together, as the second
4 sentence is clearly related to the subject matter in the first sentence. In
5 the FCC's own words, the 'only' unbundling obligation for FTTH loops is
6 where BellSouth chooses to retire existing copper loops, regardless of
7 whether or not they were deployed prior to the effective date of the
8 TRO, even though no effective date is specified. In the second
9 sentence, with the use of the terms 'newly deployed' or 'greenfield' fiber
10 loops, the FCC is explicitly referring to fiber loops built in conjunction
11 with new construction that did not have any previous copper facility
12 infrastructure, and thus, the FCC is not creating an unstated obligation
13 to unbundle FTTH loops that were in existence prior to the effective
14 date of the TRO.

15

16 Q. WHY IS BELL SOUTH CONCERNED WITH THE JOINT
17 PETITIONERS' PROPOSED LANGUAGE?

18

19 A. The language that the Joint Petitioners have offered creates an
20 obligation that the FCC did not intend, and BellSouth does not accept.
21 The Joint Petitioners have stated in previously filed arbitration testimony
22 in Alabama and North Carolina that "BellSouth has offered language
23 that references FCC Rule 51.319(a)(3) without elaboration or
24 explanation." In the Joint Petitioners' attempt to "elaborate" or "explain"
25 the FCC rules, they are introducing the concept of an effective date for

1 deployment of FTTH loops that the FCC did not include in its order and
2 which BellSouth does not accept.

3

4 ***Item 36; Issue 2-18: (A) How should line conditioning be defined in the***
5 ***Agreement? (B) What should BellSouth's obligations be with respect to***
6 ***Line Conditioning? (Attachment 2, Section 2.12.1)***

7

8 Q. SUBPART (A) OF ITEM 36 ASKS THE QUESTION "HOW SHOULD
9 LINE CONDITIONING BE DEFINED IN THE AGREEMENT?" WHAT
10 IS BELL SOUTH'S POSITION WITH RESPECT TO ITEM 36A?

11

12 A. BellSouth accepts the FCC's definition of line conditioning, which is a
13 routine network modification that BellSouth regularly undertakes to
14 provide xDSL services to its own customers. BellSouth's position is
15 entirely consistent with Paragraph 643 of the TRO which provides:
16 "Line conditioning is properly seen as a routine network modification
17 that incumbent LECs regularly perform in order to provide xDSL
18 services to their own customers. As noted above, incumbent LECs
19 must make the routine adjustments to unbundled loops to deliver
20 services at parity with how incumbent LECs provision such facilities for
21 themselves." BellSouth's proposed language further states that line
22 conditioning may include the removal of any device from a copper loop
23 or copper sub-loop that may diminish the capability of the loop or sub-
24 loop to deliver high-speed switched wireline telecommunications
25 capability, including xDSL service. Such devices include, but are not

1 limited to, load coils, excessive bridged taps, low pass filters, and range
2 extenders BellSouth has proposed this additional language simply
3 because it routinely removes similar devices from its network in the
4 process of provisioning its own DSL services, and therefore, falls within
5 the FCC's definition of line conditioning.

6
7 Q. CAN YOU BRIEFLY DESCRIBE BRIDGED TAPS AND LOAD COILS
8 THAT ARE USED TO PROVIDE OR IMPROVE VOICE SERVICE, BUT
9 CAN IMPAIR HIGH SPEED DATA SERVICES LIKE XDSL?

10
11 A. Yes. Bridged tap is an engineering technique of extending or tapping a
12 single loop so that it could serve additional customer locations (though
13 the bridged loop may serve only a single one of those customer
14 locations at a given time) and adds flexibility as service arrangements
15 and customer needs change over time. This creates additional
16 flexibility, and increases the efficiency of the BellSouth network. Load
17 coils and low pass filters are inductive devices that improve voice
18 quality, especially on long loops, by reducing high frequency noise
19 (heard by the end-user as static) The same inductor that reduces high
20 frequency noise also interferes with high frequency data signals, like
21 those used for xDSL service.

22

23

24

1 Q DOES THE FCC SUPPORT BELLSOUTH'S POSITION?

2

3 A. Yes. The FCC clearly defines a "routine network modification" in
4 paragraph 632 of the TRO. Specifically, the TRO states: "By 'routine
5 network modifications' we mean that incumbent LECs must perform
6 those activities that incumbent LECs regularly undertake for their own
7 customers." BellSouth's position and proposed language clearly state
8 that BellSouth will perform line conditioning functions that it regularly
9 undertakes for its own xDSL customers, or additional non-FCC required
10 line conditioning functions in limited situations where the CLECs and
11 BellSouth have reached agreement in the industry collaboratives.
12 Thus, BellSouth's language is entirely consistent with the FCC's ruling
13 in the TRO on this issue, and in some situations exceeds its
14 requirements for line conditioning set out in the TRO.

15

16 Q. WHY IS BELLSOUTH CONCERNED WITH THE JOINT
17 PETITIONERS' PROPOSED LANGUAGE?

18

19 A. The Joint Petitioners' proposed language creates an obligation for
20 BellSouth to perform specific line conditioning functions that BellSouth
21 does not regularly undertake for its own customers. Such an obligation
22 would lead to the development of a superior network for the Joint
23 Petitioners and is clearly not required by the FCC's definition of line
24 conditioning. Even though the FCC has clearly and unequivocally
25 stated otherwise, the Joint Petitioners have previously stated in

1 arbitration testimony filed in both Alabama and North Carolina that “Line
2 Conditioning is not limited to those functions that qualify as Routine
3 Network Modifications.” It is impossible to square this position with the
4 FCC statement that “line conditioning is properly seen as a routine
5 network modification that incumbent LECs regularly perform in order to
6 provide xDSL services to their own customers.”
7

8 Q. SUBPART (B) OF THIS ISSUE ASKS THE QUESTION “WHAT
9 SHOULD BELLSOUTH’S OBLIGATIONS BE WITH RESPECT TO
10 LINE CONDITIONING?” WHAT IS BELLSOUTH’S POSITION ON
11 ITEM 36 SUBPART (B)?
12

13 A. As stated above, BellSouth should perform line conditioning functions
14 as defined in 47 C.F.R. 51.319(a)(1)(iii) to the extent the function is a
15 routine network modification that BellSouth regularly undertakes to
16 provide xDSL to its own customers.
17

18 ***Item 37; Issue 2-19: Should the Agreement contain specific provisions***
19 ***limiting the availability of load coil removal to copper loops of 18,000 feet***
20 ***or less? (Attachment 2, Section 2.12.2)***
21

22 Q. WHAT IS BELLSOUTH’S POSITION ON THIS ISSUE?
23

24 A. As stated above, it is BellSouth’s position that it will perform the same
25 line conditioning function for CLECs that it performs for its own

1 customers. BellSouth adheres to current industry technical standards
2 that require the placement of load coils on copper loops greater than
3 18,000 feet in length to support voice service. Furthermore, BellSouth
4 does not remove load coils for BellSouth's retail end users served by
5 copper loops of over 18,000 feet in length. Therefore, such a
6 modification would not constitute a routine network modification and is
7 not required by the FCC. Even though not required under the FCC's
8 definition of line conditioning, upon a CLEC's request, BellSouth will
9 remove load coils on loops and subloops that are greater than 18,000
10 feet in length at rates pursuant to BellSouth's Special Construction
11 Process contained in BellSouth's FCC Tariff No. 2.

12

13 Q. DOES ANY FCC ORDER PROVIDE BELL SOUTH WITH A BASIS TO
14 TREAT LINE CONDITIONING IN DIFFERENT MANNERS
15 DEPENDING ON THE LENGTH OF THE LOOP ?

16

17 A. Yes. The FCC's rules clearly state that BellSouth must perform line
18 conditioning for CLECs as it does for its own retail customers.
19 Therefore, BellSouth's current procedures for treating its retail
20 customers determine the basis for line conditioning for CLECs,
21 including the Joint Petitioners. For its retail voice service customers,
22 BellSouth adds or does not add load coils depending on the length of
23 the copper loop. BellSouth's current procedures for the removal of load
24 coils for its own xDSL customers is detailed above, and these
25 procedures have been offered in a consistent manner to the CLECs

1 **Item 38; Issue 2-20: Under what rates, terms and conditions should**
2 **BellSouth be required to perform Line Conditioning to remove bridged**
3 **taps? (Attachment 2, Sections 2.12.3 & 2.12.4)**

4
5 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

6
7 A. BellSouth's offer to the CLECs exceeds its FCC requirements for line
8 conditioning. Even though BellSouth does not routinely remove any
9 bridged taps for its own customers, it has discussed, negotiated, and
10 agreed in the CLEC industry collaborative to remove a limited number
11 of bridged taps at the request of CLECs. The following bridged tap
12 removal process was developed and agreed to in the CLEC industry
13 collaborative,

14
15 1) Any copper loop being ordered by a CLEC that has over 6,000
16 feet of combined bridged tap will be modified, upon request from
17 the CLEC, so that the loop will have a maximum of 6,000 feet of
18 bridged tap. This modification will be performed at no additional
19 charge to the CLEC.

20 2) Line conditioning orders that require the removal of bridged tap
21 (serving no network design purpose) on a copper loop that will
22 result in a combined level of bridged tap between 2,500 and
23 6,000 feet will be performed at the rates set forth in Exhibit A of
24 Attachment 2 of the Interconnection Agreement.

1 3) The CLEC may request removal of any unnecessary and non-
2 excessive bridged tap (bridged tap between 0 and 2,500 feet that
3 serves no network design purpose) at rates pursuant to
4 BellSouth's Special Construction Process contained in
5 BellSouth's FCC Tariff No. 2.

6

7 Even though BellSouth is only required to perform line conditioning that
8 it performs for its own xDSL customers and is not required to create a
9 superior network for CLECs, it has agreed with the CLECs who
10 participate in the industry collaborative to offer some limited bridged tap
11 removal that exceeds what BellSouth does for itself. It is for this
12 reason, that requests for line conditioning beyond what BellSouth
13 performs for its own customers, or is willing to voluntarily provide to the
14 CLECs, are not appropriately dealt with under a Section 251 arbitration.
15 Such negotiations between the parties should be pursuant to a
16 separate agreement.

17

18 Q. DO YOU AGREE WITH THE JOINT PETITIONERS ASSERTION
19 THAT REMOVAL OF BRIDGED TAPS IS INCLUDED IN THE
20 DEFINITION OF LINE CONDITIONING?

21

22 A. No. Because BellSouth does not routinely remove bridged taps for its
23 own xDSL customers, such activity does not fall within the FCC's
24 definition of line conditioning, and is therefore not required by the TRO

25

1 **Item 45; Issue 2-27: What should be the CLEC's indemnification**
2 **obligations under a line splitting arrangement?**

3
4 Q. WHAT IS BELL SOUTH'S POSITION REGARDING THIS ISSUE?

5
6 A. BellSouth is simply requesting that its limitation of liability extend to third
7 parties that the Joint Petitioners may enter into agreements within the
8 process of establishing line splitting service. BellSouth would not
9 expose itself to such liability if it were to contract directly with the third
10 party, and does not think it appropriate that the Joint Petitioner open
11 BellSouth to additional exposure within agreements that the Joint
12 Petitioners independently enter.

13
14 **Item 46; Issue 2-28: (A) In cases in which a CLEC purchases UNEs from**
15 **BellSouth, should BellSouth be required to provide DSL transport or DSL**
16 **services (of any kind) to CLEC and its End Users? (B) If so, what rates,**
17 **terms and conditions should apply? (C) To the extent the obligation to**
18 **provide DSL does not arise pursuant to § 251 of the Act, and BellSouth is**
19 **willing to offer such services pursuant to a separate agreement or tariff,**
20 **should the obligations of the Parties be included in agreement?**
21 **(Attachment 2, Section 3.10.4)**

22
23 Q. SHOULD ISSUE 46 (AND ALL SUBPARTS) BE INCLUDED IN THIS
24 ARBITRATION PROCEEDING?

25

1 A. No. The FCC has stated on several occasions that incumbent LECs
2 are not obligated to provide CLECs with DSL transport or DSL services
3 over UNEs. Moreover, after a three day evidentiary hearing in the
4 DeltaCom arbitration, the Authority ruled in a manner consistent with
5 federal law on the DSL over UNE-P issue. There is no basis for the
6 Authority to change course and reverse itself on this issue. BellSouth's
7 position is that the Authority does not have jurisdiction to grant the relief
8 requested by the Joint Petitioners. If the Authority were to order
9 BellSouth to alter certain practices concerning its FastAccess® Internet
10 service and also to set rates, terms, and conditions for BellSouth's
11 FastAccess service, the Authority would effectively be ordering
12 BellSouth to either violate or alter the express terms of BellSouth's
13 federal tariff. The Authority clearly has no authority over FCC tariffs,
14 and thus, lacks the jurisdiction to grant the relief the Joint Petitioners
15 are seeking
16
17 Because FastAccess is unregulated and wholesale DSL service is an
18 interstate telecommunications service over which the FCC, and not the
19 Authority, has jurisdiction, granting the Joint Petitioners request
20 exceeds the Authority's jurisdiction. In its TRO, the FCC unanimously
21 rejected the CLECs' efforts to compel the ILECs into providing
22 broadband service to CLEC UNE voice customers. Also, in an order
23 addressing GTE's DSL-Solutions-ADSL Service, the FCC found that
24 "this offering, which permits Internet Service Providers (ISPs) to provide

1 their end user customers with high-speed access to the Internet, is *an*
2 *interstate service and is properly tariffed at the federal level.*⁵

3

4 The FCC addressed BellSouth's practice of not providing its federally
5 tariffed wholesale DSL service over a combined unbundled loop and
6 unbundled switch port (that is, the so-called "UNE-P") in its order
7 approving BellSouth's Louisiana/Georgia Section 271 application ⁶

8 Parties to that proceeding raised complaints about BellSouth's DSL
9 policy that are nearly identical to those asserted in this proceeding,
10 which the FCC rejected:

11

12 BellSouth states that its policy "not to offer its wholesale DSL
13 service to an ISP or other network services provider [] on a line
14 that is provided by a competitor via the UNE-P" is not
15 discriminatory nor contrary to the Commission's rules
16 Commenters allege that BellSouth will not offer its DSL service
17 over a competitive LEC's UNE-P voice service on that same line.
18 We reject these claims because, under our rules, the incumbent
19 LEC has no obligation to provide DSL service over the
20 competitive LEC's leased facilities. Furthermore, a UNE-P
21 carrier has the right to engage in line splitting on its loop. As a
22 result, a UNE-P carrier can compete with BellSouth's combined
23 voice and data offering on the same loop by providing the
24 customer with line splitting voice and data service over the UNE-
25 P loop in the same manner. Accordingly, we cannot agree with
26 commenters that BellSouth's policy is discriminatory.
27

⁵ See Memorandum Opinion and Order, *In the Matter of GTE Telephone Operating Cos. GTOC Tariff No. 1*, 13 F.C.C. rcd 22,466 at ¶1 (October 30, 1998) (emphasis added).

⁶ FCC Order No. 01-247, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Rel. May 15, 2002. ("GA/LA 271 Order")

1 Id. at ¶157 (emphasis added). The FCC, therefore, was squarely
2 presented with the issue of whether BellSouth's policy of not providing
3 its federally tariffed, wholesale DSL service over UNE-P violates federal
4 law. The FCC found no such violation. On the contrary, the FCC
5 explicitly and unequivocally found that BellSouth's policy is not
6 discriminatory and does not violate federal law. A contrary ruling by this
7 Authority under state law would be inconsistent with the requirements of
8 federal law, as interpreted by the FCC.

9
10 Q. HAS THE FCC ADDRESSED BELLSOUTH'S DSL POLICY IN OTHER
11 DECISIONS?

12
13 A. Yes. The FCC again affirmed its conclusion reached in the
14 Georgia/Louisiana Order when it approved BellSouth's 271 Application
15 for Alabama, Kentucky, Mississippi, North Carolina, and South
16 Carolina. In paragraph 164 of its order, the FCC concluded:

17
18 Finally, we reject claims by KMC and NuVox that BellSouth's
19 practice of refusing to provide DSL service on the same line over
20 which an end user subscribes to a competitive LEC's voice
21 service warrants a finding of noncompliance. As we stated in the
22 BellSouth Georgia/Louisiana Order, an incumbent LEC has no
23 obligation, under our rules, to provide DSL service over the
24 competitive LEC's leased facilities. Moreover, a UNE-P carrier
25 has the right to engage in line splitting on its loop. As a result, a
26 UNE-P carrier can compete with BellSouth's combined voice and
27 data offering on the same loop by providing the customer with
28 line splitting voice and data service over the UNE-P loop in the
29 same manner. Accordingly, we cannot agree with KMC and
30 NuVox that BellSouth's policies are discriminatory and warrant a
31 finding of checklist noncompliance. [Footnotes omitted.]

1 Again, it is clear that BellSouth's DSL policy is neither anticompetitive or
2 discriminatory. Further, as the FCC noted, CLECs have the option of
3 engaging in line splitting in order to provide DSL service to their voice
4 customers -- an option that Joint Petitioners have conveniently elected
5 to forego, despite prior representations by some CLECs that line
6 splitting is essential to competition.

7
8 It is not necessary for an end-user customer to purchase voice service
9 from BellSouth in order to receive DSL service, whether FastAccess
10 from BellSouth or another DSL service from an ISP purchasing
11 BellSouth's federally tariffed wholesale DSL transport service. This is
12 because BellSouth will provide DSL service over a line that is being
13 resold by a CLEC, because a resold line is a "BellSouth provided
14 exchange line facility" within the meaning of BellSouth's FCC Tariff
15 No.1. Thus, if a CLEC wants to provide both voice and DSL service to
16 an end user over a single line, one option is for the CLEC to resell
17 BellSouth's voice service with BellSouth-provided DSL service over the
18 same line.

19
20 When a BellSouth voice customer migrates to a CLEC for voice service
21 via an individual unbundled loop or via UNE-P, BellSouth will not
22 continue to provide DSL service to that customer. To do so would
23 violate BellSouth's FCC Tariff No 1, since an unbundled loop leased to
24 a CLEC, either on a stand-alone basis or as part of a UNE-P
25 arrangement, is not an "in-service, Telephone Company [i.e., BellSouth]

1 provided exchange line facility " F.C.C. Tariff No. 1, Section 28.2.1 (A).

2

3 The FCC repeated its conclusion in the Tennessee/Florida 271 Order,
4 rejecting claims that BellSouth's DSL over UNE-P policy was contrary to
5 the public interest.⁷

6

7 Q. WHY DOES BELL SOUTH DISCONTINUE DSL SERVICE TO A
8 CUSTOMER WHO MIGRATES TO A CLEC UTILIZING UNE-P FOR
9 VOICE SERVICE?

10

11 A. Although there are a number of reasons that justify BellSouth's DSL
12 policy, I will focus on two. First, as explained above, discontinuing DSL
13 service to a customer who migrates voice service to a CLEC utilizing
14 UNE-P is consistent with the terms and conditions of BellSouth DSL
15 service as set forth in BellSouth's FCC Tariff No. 1. Requiring
16 BellSouth to provide DSL service over the high-frequency portion of an
17 unbundled loop leased by a CLEC would necessitate a change to
18 BellSouth's FCC tariff.

19

20 Second, once a CLEC purchases an unbundled loop (or the UNE-P)
21 from BellSouth, the CLEC has control over the entire loop, including the
22 high-frequency portion of the loop. BellSouth has no right to use that

⁷ See 17 FCC Rcd at 17683, Para. 164; see also Memorandum Opinion and Order, Application by BellSouth Corporation, et al., for Authorization to Provide In-region, Inter-LATA Services in Florida and Tennessee, 17 FCC Rcd 17595 (2002) and 17 FCC Rcd at 25922, para. 178.

1 loop for any purpose. Ordering BellSouth to provide a service over a
2 facility controlled by a CLEC in order to provide a competitive service to
3 that CLEC's customers that the CLEC could offer itself would be the
4 imposition of a very unusual affirmative obligation on BellSouth to assist
5 a competitor. While the Telecommunications Act of 1996 ("1996 Act")
6 imposes certain affirmative obligations on BellSouth to assist
7 competitors, this simply is not one of them. Furthermore, to the extent
8 BellSouth were required to provide DSL service over the high-frequency
9 portion of an unbundled loop leased by a CLEC, BellSouth would have
10 to negotiate with each CLEC the rates, terms, and conditions for
11 provisioning this service. This would be no small task, given that there
12 are numerous CLECs currently operating in Tennessee, which only
13 adds to the complexity (not to mention time and expense) of the relief
14 the Joint Petitioners are seeking.

15

16 Q. SUBPART (A) OF THIS ISSUE ASKS THE QUESTION "IN CASES IN
17 WHICH A CLEC PURCHASES UNES FROM BELL SOUTH, SHOULD
18 BELL SOUTH BE REQUIRED TO PROVIDE DSL TRANSPORT OR
19 DSL SERVICES (OF ANY KIND) TO CLEC AND ITS END USERS?"
20 WHAT IS BELL SOUTH'S POSITION ON ITEM 46A?

21

22 A. BellSouth should not be required to provide DSL transport or DSL
23 services over UNEs to a CLEC and its end users because BellSouth's
24 Digital Subscriber Line Access Multiplexers ("DSLAMs") are not subject
25 to unbundling. The FCC specifically stated in paragraph 288 of the

1 Triennial Review Order that it would “not require incumbent LECs to
2 provide unbundled access to any electronics or other equipment used
3 to transmit packetized information”. A DSLAM is precisely the type of
4 equipment to which the FCC referred
5
6 Further, the FCC addressed this issue in its Line Sharing Order ⁸ and
7 concluded that incumbent carriers are not required to provide line
8 sharing to requesting carriers that are purchasing UNE-P combinations.
9 The FCC reiterated this determination in its Line Sharing
10 Reconsideration Order ⁹. It stated: “We deny, however, AT&T’s request
11 that the Commission clarify that incumbent LECs must continue to
12 provide xDSL service in the event customers choose to obtain service
13 from a competing carrier on the same line because we find that the Line
14 Sharing order contained no such requirement.” ¶ 26. The FCC then
15 expressly stated that the Line Sharing Order “does not require that
16 [LECs] provide xDSL service when they are not [sic] longer the voice
17 provider.” ¶ 26. The FCC explained: “We note that in the event that the
18 customer terminates its incumbent LEC provided voice service, for
19 whatever reason, the competitive data LEC is required to purchase the
20 full stand-alone loop network element if it wishes to continue providing
21 xDSL service.” (Line Sharing Order, at ¶ 72).

⁸ *In Re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order No. FCC 99-355 in CC Docket Nos. 98-147, 96-98 (Released December 9, 1999) (*Line Sharing Order*)

⁹ *Third Report and Order on Reconsideration* in CC Docket No. 98-147 and *Fourth Report and Order on Reconsideration* in CC Docket No. 96-98, Order No. FCC 01-26 (Released January 19, 2001) (*Line Sharing Reconsideration Order*)

1 BellSouth is asking the Authority to reach the same conclusion as it
2 reached in the DeltaCom arbitration, which is consistent with FCC
3 rulings. Specifically, BellSouth is asking the Authority to find that
4 BellSouth is not required to provide its DSL transport or DSL services
5 (of any kind) to a CLEC and its end users.
6

7 Q. IS THERE ANY OTHER REASON THAT THE AUTHORITY SHOULD
8 NOT GRANT THE CLECS' REQUEST ON ISSUE 46?
9

10 Yes, BellSouth has filed an emergency petition with the FCC to
11 specifically address this issue because of adverse and inconsistent
12 rulings in other states, and to provide a single answer that will be
13 consistently applied to all nine states that comprise BellSouth's service
14 territory. In response to this emergency petition, all current proceedings
15 in others states, including appeals, are being held in abeyance awaiting
16 the outcome of the FCC's ruling. The pleading cycle has been
17 completed, and the matter is now pending at the FCC Again, there is
18 no basis for the Authority to reverse its decision in the DeltaCom
19 arbitration. This is particularly the case when the FCC is reviewing the
20 same issue
21

22 Q. SUBPART (B) OF THIS ISSUE ASKS THE QUESTION "IF SO, WHAT
23 RATES, TERMS, AND CONDITIONS SHOULD APPLY?" WHAT IS
24 BELL SOUTH'S POSITION ON ITEM 46B?
25

1 A. Issue 45(b) in this arbitration does not apply in states that have ruled
2 that ILECs cannot be compelled to provide DSL to the CLECs UNE
3 voice customers.

4
5 Q. SUBPART (C) OF THIS ISSUE ASKS THE QUESTION "TO THE
6 EXTENT THE OBLIGATION TO PROVIDE DSL DOES NOT ARISE
7 PURSUANT TO § 251 OF THE ACT, AND BELLSOUTH IS WILLING
8 TO OFFER SUCH SERVICES PURSUANT TO A SEPARATE
9 AGREEMENT OR TARIFF, SHOULD THE OBLIGATIONS OF THE
10 PARTIES BE INCLUDED IN AGREEMENT?" WHAT IS
11 BELLSOUTH'S POSITION ON ITEM 46C?

12
13 A. Issue 45(c) in this arbitration does not apply in states that have ruled
14 that ILECs cannot be compelled to provide DSL to the CLECs UNE
15 voice customers.

16
17 ***Item 74, Issue 4-1: What definition of "Cross Connect" should be***
18 ***included in the Agreement?***

19
20 Q. WHAT IS BELLSOUTH'S POSITION IN REGARD TO THIS ISSUE?

21
22 A. The following definition of "Cross Connect" should be included in
23 Attachment 4: "A cross connect is a jumper on a frame (Main
24 Distribution Frame or Intermediate Distribution Frame) or panel (Digital

1 Service Cross Connect ('DSX') or Light Guide Cross Connect ('LGX')
2 that is used to connect equipment and/or facility terminations together.”

3

4 Q. WHY DOES BELL SOUTH DISAGREE WITH THE JOINT
5 PETITIONERS' PROPOSED DEFINITION OF A "CROSS CONNECT"?

6

7 A. BellSouth disagrees with the additional cross connect language
8 proposed by the Joint Petitioners, because the only type of cross
9 connection that is being addressed in this Attachment is a collocation
10 cross connect. This type of cross connect would only be required when
11 a particular BellSouth unbundled network element or access service is
12 terminated to or originated from a collocation arrangement. If no
13 collocation arrangement is involved in the interconnection of a
14 BellSouth service with a CLEC's equipment and/or facilities, the costs
15 associated with cross connecting the two networks would typically be
16 included in the cost of the service; therefore, no separate cross connect
17 element would be required for the interconnection of the two networks
18 Furthermore, this type of cross connect (that is, a cross connect
19 provided as part of an unbundled network element) would not be a
20 collocation cross connect, and thus, would not be addressed in
21 Attachment 4 of the Agreement. Instead, a cross connect of this nature
22 (that is, a cross connect provided as part of an unbundled network
23 element) would be addressed in the appropriate section of the
24 Agreement (i.e., Section 2) that includes the terms and conditions
25 associated with the specific type of interconnection that is being

1 requested by the Joint Petitioners.

2

3 Q. HAVE THE JOINT PETITIONERS PROPOSED ANY OTHER
4 LANGUAGE IN SECTION 3.9 THAT BELL SOUTH DISAGREES
5 WITH?

6

7 A. Yes. The last sentence proposed by the Joint Petitioners in Section 3.9
8 states: "A cross connect involved in the provision of services not
9 associated with a collocation arrangement is not ordered but is a part of
10 the provisioning of the service." BellSouth objects to the inclusion of
11 this language in Attachment 4, because Attachment 4 is not the proper
12 place in the Agreement to include language not directly related to
13 collocation cross connections.

14

15 Q. PLEASE EXPLAIN THE PURPOSE OF A COLLOCATION CROSS
16 CONNECT.

17

18 A. The purpose of a collocation cross connect is to interconnect the Joint
19 Petitioners' respective collocated equipment with the equipment and/or
20 facilities of BellSouth or another collocated telecommunications carrier.
21 Pursuant to the FCC's Rules in Section 51.323(b), BellSouth must
22 permit the collocation and use of any equipment necessary for
23 interconnection with BellSouth or for access to BellSouth's UNEs.
24 BellSouth fully complies with the FCC's Rules by permitting collocated
25 CLECs, including the Joint Petitioners, to cross connect their collocated

1 equipment and/or facilities to BellSouth's network and UNEs in all of
2 BellSouth's premises.

3

4 Q. CAN COLLOCATION CROSS CONNECTS BE USED TO GAIN
5 ACCESS TO LOOPS, TRANSPORT, MULTIPLEXERS, SWITCH
6 PORTS, AND FIBER OPTIC FACILITIES TERMINATIONS?

7

8 A. Yes. The Joint Petitioners would be able to request a collocation cross
9 connect at a particular level (2-wire, 4-wire, DS1, DS3, 2-fiber, or 4-
10 fiber) to gain access to such services as unbundled loops, unbundled
11 local switching, unbundled transport, unbundled loop/port combinations,
12 Enhanced Extended Links ("EELs"), etc.

13

14 Q. DOES BELL SOUTH'S PROPOSED LANGUAGE RESTRICT THE
15 JOINT PETITIONERS' ACCESS TO COLLOCATION CROSS
16 CONNECTS?

17

18 A. No. To the contrary, BellSouth's definition is quite simple in that it only
19 describes what a collocation cross connect is. It does not list the type
20 of services that may be cross connected with the Joint Petitioners'
21 collocated equipment and/or facilities, nor does the definition describe
22 how the cross connect and the requested services must be ordered.
23 BellSouth's language describes a cross connect as just a jumper on a
24 frame or panel that connects equipment and/or facility terminations

1 together. This definition is very generic and in my opinion is not at all
2 restrictive.

3

4 Q. ARE THE JOINT PETITIONERS FORCED TO OBTAIN
5 CONNECTIVITY TO LOOPS, TRANSPORT, MULTIPLEXERS,
6 SWITCH PORTS, OPTICAL TERMINATIONS, AND THE LIKE BY
7 PURCHASING "CABLING" AT UNKNOWN RATES OR BY
8 PURCHASING EXPENSIVE "LOCAL CHANNELS" WHICH ARE
9 ESSENTIALLY CROSS CONNECTS PRICED AT ACCESS RATES
10 ON A MINUTE-OF-USE BASIS?

11

12 A. No. In reference to Attachment 4, the Joint Petitioners would be
13 entitled, pursuant to the FCC's Rules in Section 51.323, to request
14 collocation for the purposes of interconnecting with BellSouth or
15 accessing BellSouth's UNEs. Therefore, if the Joint Petitioners request
16 that services contained in this Agreement be terminated to or originated
17 from the Joint Petitioners' respective collocation arrangements, the
18 cross connects required to interconnect these services with BellSouth's
19 network would be those collocation cross connects contained in
20 Attachment 4.

21

22 First, let me respond to the Joint Petitioners' claim that they may be
23 forced to obtain connectivity to loops, transport, multiplexers, switch
24 ports, optical terminations, and the like by purchasing "cabling" at
25 unknown rates or by purchasing expensive "local channels," to the

1 degree the Joint Petitioners are concerned with what they may be billed
2 when they place an order for an Interstate or Intrastate Access Service
3 from a BellSouth Tariff that would be terminated to a collocation
4 arrangement (either their own respective collocation arrangements or
5 another collocated telecommunications carrier's arrangement), then this
6 arbitration would not be the appropriate forum in which to address these
7 concerns. These issues would need to be addressed in a separate
8 proceeding before the appropriate regulatory agency (either the FCC or
9 the State Commission), because the means by which a
10 telecommunications carrier would be assessed for a tariffed access
11 service would be governed by the rates, terms and conditions contained
12 in the respective access tariff from which the specific service was being
13 requested. Since the access tariff would have been approved by the
14 FCC or State Commission, prior to the telecommunications carrier's
15 ability to order a service from the tariff, any dispute regarding the
16 assessment of a cross connect contained in the access tariff would
17 need to be submitted by the telecommunications carrier as a complaint
18 to the respective regulatory agency (either the FCC or State
19 Commission) that approved the tariffed access service and associated
20 cross connects.

1 Q. DOES BELLSOUTH'S PROPOSED LANGUAGE ARTIFICIALLY LIMIT
2 THE DEFINITION OF CROSS CONNECT?

3
4 A. Certainly not. BellSouth's collocation cross connect rates were
5 developed in accordance with the FCC's Total Element Long Run
6 Incremental Cost ("TELRIC") pricing rules and have been adopted by
7 the Authority as compliant with these pricing rules. As such, BellSouth
8 emphatically denies that its purpose in regard to this issue is to receive
9 a "windfall at the CLECs' expense." Rather, BellSouth has a right to be
10 and expects to be fairly compensated for the services it renders to
11 CLECs, including the Joint Petitioners.

12
13 ***Item 75, Issue 4-2: What restrictions should apply to the CLEC's use of***
14 ***collocation space or collocated equipment/facilities that impact others?***

15
16 Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

17
18 A. BellSouth's position is that the Joint Petitioners should not be permitted
19 to use any product or service provided under this Agreement, any other
20 service related thereto or used in combination therewith, or place or use
21 any equipment or facilities in any manner that (1) significantly degrades
22 (defined as an action that noticeably impairs a service from a user's
23 perspective), interferes with or impairs service provided by BellSouth or
24 by any other entity or any person's use of its telecommunications
25 services; (2) endangers or damages the equipment, facilities or any

1 other property of BellSouth or of any entity or person; (3) compromises
2 the privacy of any communications routed through BellSouth's
3 premises, or (4) creates an unreasonable risk of injury or death to any
4 individual or to the public.

5
6 Q. DOES THE JOINT PETITIONERS' LANGUAGE ENSURE A
7 PROPORTIONAL RESPONSE TO INTERFERENCE AND PREVENT
8 BELL SOUTH FROM TERMINATING SERVICE ARBITRARILY OR
9 FOR MINOR INFRACTIONS?

10

11 A. No. BellSouth disagrees that the Joint Petitioners' proposed language:
12 (1) fully protects BellSouth's, another entity's (whether collocated or
13 not), or an end user's use of its telecommunications services from
14 interference or impairment caused by the Joint Petitioners' products,
15 services, equipment and/or facilities; (2) provides assurance that
16 BellSouth's, another entity's (whether collocated or not), or an end
17 user's equipment, facilities or property will not be endangered or
18 damaged by a product or service offered by the Joint Petitioners or by
19 the placement and use of collocated equipment or facilities owned by
20 the Joint Petitioners; and (3) eliminates BellSouth's concern that the
21 privacy of any communications carried over the public switched
22 telecommunications network may be compromised.

23

24 Q. ARE THE PARTIES DISPUTING THE MEASURES THAT WOULD BE
25 TAKEN BY BELL SOUTH IF BELL SOUTH REASONABLY

1 DETERMINES THAT THE JOINT PETITIONERS' EQUIPMENT OR
2 FACILITIES IS IN VIOLATION OF THE PROVISIONS IN SECTIONS
3 5.21.1 AND 5.21.2?
4

5 A. Yes.
6

7 Q. WHAT MEASURES WOULD BE TAKEN BY BELL SOUTH IF THE
8 JOINT PETITIONERS' EQUIPMENT OR FACILITIES ARE
9 DETERMINED TO BE IN VIOLATION OF THE INTERFERENCE OR
10 IMPAIRMENT PROVISIONS?
11

12 A. BellSouth will provide written notice to the CLEC requesting that the
13 CLEC take whatever measures are necessary to cure the identified
14 violation within forty-eight (48) hours of the CLEC's actual receipt of
15 written notice from BellSouth or at a minimum, to commence curative
16 measures within twenty-four (24) hours and to exercise reasonable
17 diligence to complete such measures as soon as possible thereafter.
18 After the CLEC has received written notice from BellSouth, the Parties
19 will consult immediately and, if necessary, conduct an inspection of the
20 arrangement to determine the source of the significant degradation.
21

22 Excluding the deployment of an advanced service which significantly
23 degrades the performance of other advanced services or traditional
24 voice band services, if the CLEC fails to commence curative action
25 within twenty-four (24) hours and exercise reasonable diligence to

1 complete the action as soon as possible, or if the violation poses an
2 immediate and substantial threat of damage to property or injury or
3 death to any person (or any other significant degradation, interference,
4 or impairment of BellSouth's or another entity's service), then BellSouth
5 may take other action it deems necessary to eliminate such threat,
6 including the interruption of electrical power to the CLEC's equipment, if
7 BellSouth has determined beyond a reasonable doubt that the CLEC's
8 equipment is the cause of the threat. BellSouth will provide notice to
9 the CLEC before taking the action, if possible. Otherwise, BellSouth
10 will notify the CLEC as soon as possible.

11

12 Q. WHAT IS THE POINT OF CONTENTION BETWEEN THE PARTIES IN
13 REGARD TO BELL SOUTH'S LANGUAGE?

14

15 A. BellSouth believes the real point of contention between the Parties is
16 exactly when BellSouth may take steps to eliminate a threat of damage
17 to property, injury or death to an individual, or to cure a violation
18 causing interference or impairment of BellSouth's service or another
19 entity's service. The Joint Petitioners' proposal is that BellSouth should
20 only be permitted to take this action if the violation poses an immediate
21 and substantial threat of physical damage to property or injury or death
22 to any person. BellSouth's position is that it should also be able to take
23 the action described above if there is any other significant degradation,
24 interference or impairment of BellSouth's service or another entity's

1 service.

2

3 Q. DOES BELLSOUTH'S LANGUAGE ENTITLE IT TO TERMINATE
4 PETITIONERS' SERVICES IN RESPONSE TO A MINOR
5 INTERFERENCE?
6

7 A. No. BellSouth's language is much more precise than is the Joint
8 Petitioners' language in defining when BellSouth would be entitled to
9 terminate a CLEC's services, if a violation should ever reach a certain
10 point. For example, "minor interference" caused by a CLEC's service or
11 equipment would not likely ever reach the point at which BellSouth
12 would need to terminate the CLEC's services. Moreover, BellSouth
13 would provide written notice to the CLEC of any identified violation
14 requesting that the Parties consult immediately to determine the source
15 of the problem.
16

17 Q. DOES THE BELLSOUTH PROPOSED LANGUAGE RENDER
18 BELLSOUTH THE ARBITER, WITHOUT LIMITATION, AS TO WHAT
19 PROBLEMS WARRANT TERMINATION?
20

21 A. No, BellSouth does not propose that it may, without limitation,
22 determine what problems warrant termination of a CLEC's services.
23 BellSouth must reasonably determine that the products, services,
24 equipment, or facilities of the CLEC are in violation of the provisions
25 contained in Attachment 4, before written notice is provided to the

1 CLEC directing the CLEC to cure the violation or take other steps, as
2 described above.

3

4 Further, if the CLEC disagrees with BellSouth's determination that a
5 violation exists, the CLEC has the right to submit its dispute to the
6 Authority and present evidence showing why it should not be required
7 to clear the interference or impairment identified by BellSouth. This
8 places the Authority in the role of arbiter, instead of BellSouth, to
9 determine whether the interference identified by BellSouth should result
10 in the termination of the CLEC's services.

11

12 Q. DOES BELLSOUTH'S PROPOSED LANGUAGE INAPPROPRIATELY
13 EXPAND THIS PROVISION TO INCLUDE "EQUIPMENT, FACILITIES,
14 OR ANY OTHER PROPERTY OF BELLSOUTH OR OF ANY OTHER
15 ENTITY OR PERSON"?

16

17 A. No, the Parties continue to disagree on what circumstances may
18 actually result in the disruption or termination of a CLEC's operations or
19 service. Additionally, the Parties disagree as to whose services must
20 be degraded, interfered with or impaired, before BellSouth can take
21 action to eliminate the source of the problem. The Joint Petitioners'
22 propose that BellSouth should only be permitted to seek curative action
23 when the source of the degradation, interference or impairment
24 endangers or damages the equipment or facilities of BellSouth or any
25 other telecommunications carrier collocated in BellSouth's premises.

1 BellSouth believes that it should be able to take whatever measures are
2 necessary to stop degradation, interference or impairment to
3 BellSouth's equipment and facilities and to those of any other entity
4 (whether collocated or not).

5

6 Q. DOES THE BELL SOUTH PROPOSED LANGUAGE SEEK TO HOLD
7 PETITIONERS ACCOUNTABLE FOR ANY COMPROMISE OF
8 CUSTOMER PRIVACY, REGARDLESS OF WHETHER THE BREACH
9 WAS KNOWING OR UNLAWFUL?

10

11 A. No. BellSouth only seeks to require a CLEC to eliminate whatever is
12 causing the compromise of a customer's privacy of communications.
13 BellSouth does not dispute the fact that if a significant breach of a
14 customer's privacy of communications is caused specifically by a
15 CLEC's products, services, equipment, or facilities, there should be
16 some level of liability associated with the breach. However, BellSouth
17 has proposed no language that would create any type of "strict liability"
18 on the Joint Petitioners for the breach of a customer's privacy.

19

20 Moreover, BellSouth believes that it is commercially reasonable and in
21 keeping with federal law for the Party responsible for the breach in the
22 privacy of communications carried over the public switched
23 telecommunications network to be responsible for isolating and curing
24 the problem as soon as the cause has been determined and BellSouth
25 has notified the responsible Party. Any other approach would

1 potentially jeopardize the privacy of any communications routed through
2 BellSouth's premises and the integrity of the public switched
3 telecommunications network.

4
5 Q. DOES BELLSOUTH'S PROPOSED LANGUAGE PERMIT
6 BELLSOUTH TO TERMINATE A COLLOCATED CLEC'S
7 ELECTRICAL POWER, IF INTERFERENCE POSES A THREAT OF
8 ANY OTHER SIGNIFICANT DEGRADATION, INTERFERENCE OR
9 IMPAIRMENT OF BELLSOUTH'S OR ANOTHER ENTITY'S
10 SERVICE?

11
12 A. No. BellSouth should be permitted to take whatever action it deems
13 necessary to eliminate "any other significant degradation, interference,
14 or impairment of BellSouth's or another entity's service," including the
15 interruption of electrical power to the CLEC's equipment, if BellSouth
16 has determined beyond a reasonable doubt it is the cause of the
17 degradation, interference or impairment. What the Joint Petitioners
18 have failed to point out in their testimony is that BellSouth would only
19 resort to the interruption of a CLEC's power when BellSouth has
20 established beyond a reasonable doubt that the CLEC's equipment is
21 causing a significant problem. If possible, BellSouth would provide
22 notice to the CLEC prior to the taking of such action. If this were not
23 possible due to the nature of the threat, however, BellSouth would
24 provide notice to the CLEC as soon as possible thereafter.

25

1 Q. DOES THIS LANGUAGE GIVE BELLSOUTH TOO MUCH LATITUDE
2 IN DETERMINING WHETHER TO TERMINATE POWER?

3

4 A. No. BellSouth would only consider interrupting or terminating a CLEC's
5 power in an extremely rare and severe instance, such as if there was a
6 substantial threat of damage to property or injury or death to any person
7 in BellSouth's premises. In the case of significant degradation,
8 interference, or impairment of BellSouth's service or another entity's
9 service, BellSouth would use its best efforts to provide immediate notice
10 to the CLEC prior to taking any action. Furthermore, BellSouth has
11 committed to working closely with the CLEC to ensure that whatever
12 curative measures are necessary to eliminate the threat or violation
13 would be taken prior to the problem escalating to the point at which
14 BellSouth would interrupt or terminate power to the CLEC's equipment.

15

16 ***Item 76, Issue 4-3: How should grandfathered rates apply?***

17

18 Q. WHAT IS BELLSOUTH'S POSITION IN REGARD TO THIS ISSUE?

19

20 A. When rates have been "grandfathered", the rates that would apply are
21 those rates that were in effect prior to the Effective Date of this
22 Agreement, or as otherwise specified within the Agreement. There
23 should be no other exceptions allowed for the application of
24 "grandfathered" rates

25

1 Q. DOES BELLSOUTH'S PROPOSED LANGUAGE REQUIRE THE JOINT
2 PETITIONERS TO DOUBLE-PAY FOR CERTAIN COLLOCATION
3 CHARGES?

4

5 A. No. BellSouth's position is certainly not that the Joint Petitioners should
6 "double pay." To the contrary, the crux of the dispute is the additional
7 language proposed by the Joint Petitioners, to wit "unless application of
8 such rates would be inconsistent with the underlying purpose for
9 grandfathering". The Joint Petitioners' additional proposed language is
10 ambiguous.

11

12 Q. DOES BELLSOUTH'S PROPOSED LANGUAGE SUGGEST THAT
13 THE JOINT PETITIONERS SHOULD BE REQUIRED TO DOUBLE-
14 PAY COLLOCATION POWER CHARGES AND SPACE
15 PREPARATION FEES?

16

17 A. No. BellSouth's language does not in any way suggest that the Joint
18 Petitioners should be required to double-pay for any collocation
19 charges, including those associated with collocation power and space
20 preparation. Instead, if the Joint Petitioners provide BellSouth with
21 documentation proving that they have paid in full all of the Individual
22 Case Basis ("ICB") or Nonrecurring ("NR") charges associated with
23 installation or preparation activities performed and billed by BellSouth
24 for a particular collocation arrangement, then no additional installation
25 or preparation fees would be billed for those collocation arrangements.

1 Any applications submitted for collocation arrangements or
2 augmentations requesting additional space or facilities for an existing
3 collocation arrangement that would require BellSouth to perform
4 installation or preparation activities, however, would be billed pursuant
5 to the current applicable monthly recurring and non-recurring rates set
6 forth in Exhibit B (the Rate Sheet) of Attachment 4.

7
8 Q. HAS BELL SOUTH PROPOSED LANGUAGE IN ATTACHMENT 4
9 THAT ADDRESSES HOW GRANDFATHERED COLLOCATION
10 POWER CHARGES AND SPACE PREPARATION FEES SHOULD BE
11 ASSESSED?

12
13 A. Yes. BellSouth has proposed specific language in Section 8 11.1 that
14 describes how BellSouth proposes to assess grandfathered DC power
15 charges to the Joint Petitioners. Regarding space preparation fees,
16 BellSouth has proposed specific language in Section 8.6 that addresses
17 how these fees should be assessed, including those instances in which
18 a CLEC has already paid space preparation fees through grandfathered
19 ICB or NR charges. The appropriate assessment of grandfathered DC
20 power charges and space preparation fees is also the subject of Issues
21 4.6 and 4.5, respectively

1 **Item 77, Issue 4-4: When should BellSouth commence billing of recurring**
2 **charges for power?**

3
4 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

5
6 A. If the CLEC has met the applicable fifteen (15) calendar day
7 walkthrough interval specified in Section 4.3 of the Attachment, billing
8 for recurring power charges should commence upon the Space
9 Acceptance Date. If the CLEC fails to complete an acceptance
10 walkthrough within the applicable fifteen (15) calendar day interval,
11 billing for recurring charges should commence on the Space Ready
12 Date. If the CLEC occupies the space prior to the Space Ready Date,
13 then the date the CLEC occupies the space should be deemed the new
14 Space Acceptance Date and billing for recurring power charges should
15 begin on that date.

16
17 Q. SHOULD BILLING FOR POWER COMMENCE AFTER THE
18 REQUISITE POWER CABLING IS INSTALLED (I.E., WHEN LEADS
19 ARE TIED DOWN TO A FUSE PANEL OR BATTERY DISTRIBUTION
20 FUSE BOARD ("BDFB"))?

21
22 A. No. The monthly recurring charges for DC power are appropriately
23 assessed when BellSouth has completed its space conditioning and
24 provisioning work and has turned the now "functional space" over to the
25 requesting CLEC. Functional space is defined as space that is

1 completely conditioned according to the CLEC's specifications and can
2 be utilized to interconnect with BellSouth's network and/or access
3 BellSouth UNEs. As soon as BellSouth has turned this functional
4 space over to the CLEC, it is the CLEC's responsibility to install its DC
5 power cabling and begin operating its equipment as quickly as possible.
6 There is nothing further that BellSouth would need to do to the space
7 for the CLEC to begin utilizing it for the purpose for which it was
8 designed.

9
10 Q. WHY DOES BELLSOUTH ADVOCATE THE COMMENCEMENT OF
11 BILLING FOR THE MONTHLY RECURRING CHARGES
12 ASSOCIATED WITH DC POWER ON EITHER THE SPACE
13 ACCEPTANCE DATE OR THE SPACE READY DATE?

14
15 A. BellSouth advocates this approach because the DC power rate element
16 includes activities that require capital investments, which must be
17 recovered on a recurring charge basis.

18
19 Q. WHAT COSTS DOES THE MONTHLY RECURRING CHARGE FOR
20 DC POWER RECOVER?

21
22 A. The monthly recurring charge for DC power recovers the costs
23 associated with the power plant investment required to convert AC
24 power to DC power for central office usage and the monthly AC power
25 utility costs associated with powering a CLEC's collocation equipment.

1 Q. WHY IS THIS IMPORTANT?

2

3 A. This is important because the recurring charge includes not only a
4 charge for the actual electricity used on an ongoing basis, but also the
5 investment in infrastructure that is necessary to convert commercial AC
6 power to DC power. This investment is in equipment that must be in
7 place before the actual DC power is supplied to the requesting CLECs
8 and it comprises the majority of the monthly recurring charge. Thus,
9 contrary to the Joint Petitioners' assertions, BellSouth has incurred a
10 great deal of infrastructure costs before the CLEC actually begins to
11 draw electricity for its collocation arrangement.

12

13 Q. THE JOINT PETITIONERS ARGUE THAT BELL SOUTH'S ABILITY TO
14 BEGIN BILLING FOR DC POWER PRIOR TO THE INSTALLATION
15 OF THE REQUISITE POWER CABLING "IS NOTHING MORE THAN
16 TAKING THE PETITIONERS' MONEY FOR NO SERVICES
17 RENDERED." PLEASE COMMENT.

18

19 A. First of all, the Joint Petitioners are wrong for the reason I just
20 explained: services are rendered to the CLECs before they begin to
21 draw power, because BellSouth has already provided the infrastructure
22 to support the CLEC's use of power and incurred the attendant
23 expense. Beyond this, the Joint Petitioners' argument appears to be
24 that a CLEC's requested collocation space is not "ready" until the CLEC
25 has completed the installation of its equipment, turned up its power, and

1 interconnected with BellSouth's network or placed an order for
2 BellSouth UNEs. This contention is incorrect. As soon as the
3 requested collocation space is available for the CLEC's occupancy and
4 installation of power and equipment, the CLEC should be required to
5 begin paying for the space, including paying for DC power. The space
6 and the power requirements associated with this space cannot be used
7 for any other purpose by any other entity, including BellSouth. It is
8 dedicated to the exclusive use of the requesting CLEC. Therefore, it is
9 appropriate for BellSouth to immediately begin billing the monthly
10 recurring charges for the space and power that it has provisioned in
11 accordance with the CLEC's request.

12

13 Q. WOULD IT BE DIFFICULT FOR BELL SOUTH TO BEGIN BILLING A
14 CLEC FOR DC POWER AT THE TIME THE CLEC CABLES ITS
15 POWER TO THE BELL SOUTH BDFB?

16

17 A. Yes. Under the Joint Petitioners' proposal, BellSouth would be saddled
18 with the burden of continuously monitoring each collocation space
19 BellSouth has provisioned and turned over to the CLECs, because the
20 responsibility for determining when the CLEC had completed the
21 required power cabling to its collocation space and turned up its
22 collocation equipment would fall to BellSouth. This administrative
23 requirement would not only be extremely burdensome, but would also
24 cause BellSouth to incur additional costs. Further, as I will explain
25 below, such a practice would penalize BellSouth for a CLEC's failure to

1 install its own equipment in a timely manner.

2

3 Q. DO YOU HAVE ANY OTHER COMMENTS YOU WOULD LIKE TO
4 MAKE IN REGARD TO THE JOINT PETITIONERS' DC POWER
5 BILLING PROPOSAL?

6

7 A. Yes. BellSouth should not be penalized for a CLEC's lack of
8 preplanning for the installation of its power cabling and equipment
9 installation. The CLEC is provided with a tentative Space Ready Date
10 by BellSouth, which becomes more definitive as the provisioning
11 interval nears completion, as soon as the CLEC has submitted its Bona
12 Fide Firm Order ("BFFO"). Therefore, the CLEC has no excuse for not
13 having made arrangements for the prompt installation of its power
14 cabling and equipment.

15

16 When BellSouth provisions the collocation space in accordance with the
17 CLEC's specifications, it should be compensated when the space is
18 turned over to the CLEC for its use. Additionally, if a CLEC wants to
19 begin installing its power cabling and equipment concurrent with
20 BellSouth's provisioning of the collocation space, then the CLEC may
21 request an early space acceptance from BellSouth, prior to the Space
22 Ready Date. In this instance, BellSouth would begin billing the CLEC
23 for the monthly recurring charges associated with the early space
24 acceptance; however, this would give the CLEC the ability to complete
25 its power cabling, turn up its equipment, and interconnect with

1 BellSouth's network or access BellSouth UNEs as soon as the
2 provisioning of the space had been completed and turned over to the
3 CLEC (Space Ready Date).
4

5 Q. IS THERE A REASONABLE BASIS FOR BELL SOUTH TO ASSERT
6 THAT IT IS OWED MONEY FOR POWER NOT YET CONNECTED TO
7 THE JOINT PETITIONERS' COLLOCATED EQUIPMENT, SINCE
8 BELL SOUTH IS NOT BEING CHARGED BY THE POWER COMPANY
9 FOR POWER THAT IS NOT BEING DRAWN?
10

11 A. Yes. Again, the Joint Petitioners evidently do not understand that the
12 monthly recurring DC power rate recovers not only the costs associated
13 with the monthly AC power utility costs (which is a very small
14 component of the power rate), but also the power plant investment
15 required to convert AC power to DC power for central office usage.
16

17 Q. HAVE OTHER STATE COMMISSIONS IN THE BELL SOUTH REGION
18 CONSIDERED THIS ISSUE?
19

20 A. Yes. The Florida Public Service Commission ("FPSC") considered, in
21 the context of a generic proceeding (Docket Nos. 981834-TP/990321-
22 TP), a number of issues related to collocation. That Commission
23 approved a stipulation by the Parties to resolve this same issue (Order
24 No. PSC-03-1358-FOF-TP, issued November 26, 2003). The stipulated
25 language approved by the FPSC reads as follows: "If the CLEC

1 accepts the collocation space before or within the time designated by
2 the interconnection agreements between the CLEC and the ILEC, or if
3 there is no ICA between the parties, or the ICA is silent on the period
4 allowed for a walk-through, or the arrangement was ordered out of the
5 ILEC's tariff within 15 calendar days after the space ready date, billing
6 of monthly recurring charges should begin in the next billing cycle and
7 should include prorated charges for the period from the CLEC
8 acceptance date to the bill issuance date. If the CLEC does not
9 conduct a walk-through within the time designated by the ICA, or if
10 there is no ICA between the parties, or the ICA is silent on the period
11 allowed for a walk-through, or the arrangement was ordered out of the
12 ILEC's tariff within 15 calendar days after the space ready date, billing
13 of monthly recurring charges should begin in the next billing cycle and
14 should include prorated charges for the period from the space ready
15 date to the bill issuance date. If the CLEC conducts the walk-through
16 but does not accept the collocation space, the ILEC and the CLEC
17 should work together to resolve any problems with the space. If the
18 CLEC occupies the collocation space prior to the space ready date,
19 billing should begin in the next billing cycle and should include prorated
20 charges for the period from the CLEC occupancy date to the bill
21 issuance date. Disputes concerning the reasonableness of an
22 acceptance or refusal of space should be resolved under the parties'
23 ICA. If the dispute cannot be resolved by the parties pursuant to their
24 ICA, it should be submitted to the Commission for resolution." (p. 5 – 6)
25 BellSouth's position is consistent with the stipulated language the

1 Florida Commission approved. The Authority should approve this
2 solution as well.

3

4 ***Item 80, Issue 4-7: (A) How should recurring and non-recurring charges***
5 ***be applied? (B) What should the charges be?***

6

7 Q. WHAT IS BELL SOUTH'S POSITION IN REGARD TO SUBPART (A)
8 OF THIS ISSUE?

9

10 A. The response to this question is dependent upon the DC power billing
11 methodology the CLEC has elected to use for each of its collocation
12 arrangements. In Tennessee, the CLEC may choose the fused amp
13 billing option (which is by far the most common option used by the
14 CLECs) or the measured (also referred to as "metered") power billing
15 option. Under the fused amp billing option, monthly recurring charges
16 for -48V DC power should be assessed per fused amp per month
17 based upon BellSouth's engineered and installed power feed fused
18 ampere capacity as requested by the CLEC, in a manner consistent
19 with the Authority's orders and as set forth in Section 8 of Attachment 4.
20 Non-recurring charges for -48V DC power would not be applicable
21 under the regional fused amp billing option.

22

23 Under the power usage metering option, monthly recurring charges for -
24 48V DC power should be assessed based on (1) an AC usage
25 component of the DC power consumed by the CLEC, as determined by

1 the CLEC's actual metered usage for each power feed (the so-called A
2 and B feeds), or at least 10 amps of AC power for each A and B feed
3 associated with each power cable and (2) a DC power infrastructure
4 component based on the CLEC's requested fused amperage capacity,
5 which would recover the costs of the DC power plant and the
6 associated equipment required to convert AC power to DC power.

7
8 Monthly recurring charges should also be assessed, under the power
9 usage metering option, on a per site basis, for the CLEC's collocation
10 arrangements to recover: 1) BellSouth's expenses to program the
11 applicable billing systems to accept and process the power usage
12 measurement option, 2) BellSouth's expenses associated with its
13 workforce loading the measured power usage data into BellSouth's
14 OSS and billing systems, and 3) the costs for a BellSouth employee or
15 BellSouth Certified Supplier to provide the clamp-on ammeter or other
16 measurement device and perform the task of measuring the actual
17 power consumption at each requested collocation site. The monthly
18 recurring charges for the AC usage component, the power
19 infrastructure component, and the Meter Reading expense would be
20 included in and assessed pursuant to Exhibit B (Rate Sheet) of the
21 Attachment.

22
23 A non-recurring "Additional Meter Reading Trip Charge" would be
24 assessed on a per site basis when the CLEC requests an unscheduled
25 power usage reading be taken at a particular central office or if the

1 CLEC fails to provide access to its collocation space or fails to provide
2 BellSouth or the BellSouth Certified Supplier with sufficient notification
3 of the necessity to cancel and/or reschedule the initial agreed-upon
4 appointment. This charge would appear on the CLEC's next monthly
5 billing statement.

6
7 The non-recurring charge associated with the submission of a
8 Subsequent Application, to convert existing collocation arrangements to
9 a power metering option or to remove or install telecommunications
10 equipment in the CLEC's space, would be billed on the date that
11 BellSouth provides an Application Response to the Subsequent
12 Application.

13

14 Q. PLEASE DEFINE THE PHRASE 'ENGINEERED AND INSTALLED
15 POWER FEED FUSED AMPERE CAPACITY'.

16

17 A. The phrase "engineered and installed power feed fused ampere
18 capacity" is referring to the number of fused amps that would be billed
19 by BellSouth to the CLEC in accordance with what the CLEC had
20 requested on its collocation application and confirmed in its Bona Fide
21 Firm Order ("BFFO"). The amount of fused ampere capacity would be
22 engineered and installed by the CLEC's BellSouth Certified Power
23 Supplier ("Supplier") in accordance with the CLEC's Method of
24 Procedure ("MOP"), which is the document the Supplier would follow
25 when installing DC power cabling on behalf of the CLEC from the

1 BellSouth BDFB to the CLEC's collocation space. The MOP should
2 reflect exactly the same number of fused amps that were requested by
3 the CLEC on its BFFO to BellSouth, because the CLEC would be billed
4 by BellSouth based on the number of fused amps of DC power capacity
5 requested in its BFFO.

6

7 Q. WHAT IS BELL SOUTH'S POSITION ON SUBPART (B) OF THIS
8 ISSUE?

9

10 A. The monthly recurring DC power rate that should be assessed to the
11 Joint Petitioners is reflected in Exhibit B of Attachment 4.

12

13 Q. DOES BELL SOUTH BELIEVE THE CURRENT DC POWER RATE
14 ELEMENTS, FOR BOTH BILLING OPTIONS, NEED TO BE UPDATED
15 TO REFLECT BELL SOUTH'S CURRENT DC POWER COSTS?

16

17 A Yes. These rate elements were developed by AT&T/MCI in a 1999 cost
18 study and subsequently adopted by the Authority in the Permanent
19 Pricing Docket.¹⁰ Those rates developed in 1999 are outdated and
20 need to be revised to reflect more current cost data. Furthermore,
21 since BellSouth did not develop these rates pursuant to the TELRIC
22 methodology that BellSouth has used in the development of every

¹⁰ *In re: Petition of BellSouth Telecommunications, Inc. to Convene a Contested Case to Establish "Permanent Prices" for Interconnection and Unbundled Network Elements*, Docket No. 97-01262 ("Permanent Pricing Docket").

1 unbundled network element ("UNE") in its nine-state region, it is
2 extremely difficult, if at all possible, for BellSouth to interpret what inputs
3 were included in the development of these rates and how the formulas
4 worked in the many intricate programs with the cost study system to
5 calculate the actual TELRIC rates for DC power. Thus, it is extremely
6 likely that the rate elements developed for DC power do not fully
7 recover the costs associated with providing fused power capacity to the
8 CLECs in Tennessee. This is due to many factors, including inflation,
9 changes in capital costs, availability of parts, changes in code
10 requirements, etc. Therefore, BellSouth urges the Authority to adopt
11 new DC power rates in this proceeding to reflect BellSouth's actual
12 costs to provision the CLEC's current and ongoing DC power needs.
13 Until BellSouth is permitted to update these rate elements, BellSouth
14 will assess those CLECs in Tennessee the applicable rate element(s)
15 adopted by the Authority in the Pricing Docket. BellSouth will file its
16 proposed DC power rates on July 9, 2004.

17
18 Q. IN SECTION 9.1.1 OF ATTACHMENT 4, IT APPEARS THAT, UNDER
19 THE FUSED AMP BILLING OPTION, BELL SOUTH IS PROPOSING
20 TO ASSESS NONRECURRING POWER RATES ON AN ICB BASIS?
21 IS THIS TRUE?

22
23 A. No. In fact, after reviewing the language in Section 9.1.1, BellSouth
24 has determined that the last sentence needs to be stricken in its
25 entirety. BellSouth does not currently assess, nor does it intend on

1 doing so in the future, any portion of DC fused amp power capacity on a
2 nonrecurring charge basis under the fused amp billing option.

3 BellSouth currently bills DC power, per fused amp, on a monthly
4 recurring charge basis, which is consistent with the DC power rate
5 ordered by the Authority in the Permanent Pricing Docket.¹¹

6

7 ***Item 81, Issue 4-8: (A) Should CLEC be permitted to choose between a***
8 ***fused amp billing option and a power usage metering option? (B) If***
9 ***power usage metering is allowed, how will recurring and non-recurring***
10 ***charges be applied and what should those charges be?***

11

12 Q. WHAT IS BELL SOUTH'S POSITION IN REGARD TO SUBPART (A)
13 OF THIS ISSUE?

14

15 A. The CLECs in Tennessee already have the ability to choose between a
16 fused amp billing methodology and a power usage metering option in
17 Tennessee.

18

19 Q. WHEN DID THE AUTHORITY REQUIRE BELL SOUTH TO OFFER A
20 USAGE-BASED DC POWER BILLING OPTION?

21

22 A Pursuant to the Authority's orders in the MCI/WorldCom Arbitration

¹¹ Id.

1 case¹², BellSouth was ordered to develop a power metering usage
2 option in the state of Tennessee. BellSouth has complied with the
3 Authority's requirement and, even though this option was issued
4 pursuant to a specific CLEC arbitration case, BellSouth currently makes
5 this option available to any CLEC in Tennessee that requests it. I
6 would note, however, that MCI/WorldCom, the CLEC that requested
7 BellSouth make this option available, has never requested this option.

8
9 Q. HAVE ANY OTHER STATES IN THE BELL SOUTH REGION
10 ADOPTED AN ALTERNATIVE DC POWER BILLING OPTION?

11
12 A. Yes. In Florida, after much testimony was presented by the Parties in
13 the Generic Florida Public Service Commission ("FPSC") Collocation
14 Order in Docket Nos. 981934-TP/990321-TP, the FPSC determined a
15 CLEC could order its DC power feeds based on its future, higher
16 demand level, but to initially fuse its power feeds so that a lesser
17 amount of power could be drawn.¹³

18
19 In Georgia, the Georgia Public Service Commission ("GPSC") in its
20 Generic GPSC UNE Order required usage-based pricing for DC power,

¹² *TN MCI/WorldCom Interim Order of Arbitration Award*, Docket No. 00-00309, dated April 3, 2002, Issue 61, pp. 42 – 43, and *TN MCI/WorldCom Order Denying Reconsideration, Granting Clarification, and Adopting WorldCom's Final Best Offer*, Docket No. 00-00309, dated May 30, 2002, Issue 61, p. 7

¹³ *Generic FPSC Collocation Order*, Docket Nos. 981834-TP/990321-TP, Order No. PSC-03-1358-FOF-TP, dated November 26, 2003, Issue No. VII, p. 40.

1 while recognizing the costs BellSouth would incur for installing and
2 reading meters.¹⁴ Therefore, the GPSC ordered BellSouth to offer the
3 CLECs the option of being billed for power on a load amp basis
4

5 Q. HAS BELLSOUTH IMPLEMENTED THE ALTERNATIVE DC POWER
6 BILLING OPTIONS ORDERED IN THESE OTHER TWO STATES?
7

8 A. No. The Florida and Georgia Commissions have not yet determined
9 the appropriate power usage billing methodology and associated rate
10 elements for their respective states.
11

12 Q. WHAT IS BELLSOUTH'S POSITION IN REGARD TO SUBPART (B)
13 OF THIS ISSUE?
14

15 A. BellSouth has already implemented an effective power usage metering
16 option in Tennessee, and it is available to the Joint Petitioners.
17

18 Q. PLEASE DESCRIBE HOW THE POWER USAGE METERING OPTION
19 PLAN WORKS IN TENNESSEE.
20

21 A. Specifically, the monthly recurring charges for –48V DC power are
22 assessed based on an AC usage consumption component of the DC

¹⁴ *Generic GPSC UNE Order*, Docket No. 14361-U, dated June 23, 2003, Issue 13a, p 41.

1 power consumed by the CLEC and an infrastructure component
2 associated with the DC power plant and the associated equipment
3 required to convert AC power to DC power. The bifurcated monthly
4 recurring DC power rates ordered by the Authority in Docket 97-01262
5 are the rates currently being used by BellSouth for these two
6 components. BellSouth will arrange for the measurement of the
7 CLEC's actual power usage on each A & B power feed once each
8 quarter at each of the CLEC's collocation arrangements (i.e., a
9 quarterly meter reading service), for which the CLEC has requested
10 conversion to the metered power usage. After the actual power usage
11 measurements have been taken, these measurements are used to
12 calculate the AC Usage charge on the CLEC's bill for the following
13 three (3) months or until the next measurement is taken. A minimum of
14 ten (10) amps of -48V DC power usage for the combination of each
15 A&B pair of power feed is required for the CLEC to operate equipment
16 in its collocation space. BellSouth also assesses the CLEC a monthly
17 recurring charge for BellSouth's power plant infrastructure investment
18 component of the DC power charges, based upon the CLEC's
19 requested fused amperage capacity (requested by the CLEC on its
20 Initial and Subsequent Applications). Finally, BellSouth bills the CLEC
21 a monthly recurring charge per site for the CLEC's collocation
22 arrangements in Tennessee, which reflects the costs for BellSouth or a
23 BellSouth Certified Supplier to provide the clamp-on ammeter or other
24 measurement device, perform the task of measuring the actual power

1 usage at each requested collocation site, record the usage
2 measurements, and submit these measurements to the billing systems.

3

4 Nonrecurring charges for –48V DC power distribution are based on the
5 costs associated with collocation power plant investment and the
6 associated infrastructure. Some of the nonrecurring charges that may
7 apply under a power usage metering billing option include a Billing
8 System Set-Up Fee to Accept Power Usage Measurement, a
9 Subsequent Application Fee, a Power Reconfiguration Application Fee,
10 an Administrative Only Application Fee, and/or an Additional Meter
11 Reading Trip Charge.

12

13 The above monthly recurring charges and nonrecurring charges ensure
14 that BellSouth's costs to implement a power usage metering billing
15 option in Tennessee are fully recovered from the CLECs.

16

17 ***Item 82, Issue 4-9: For BellSouth-supplied AC power, should [a] CLEC be***
18 ***entitled to choose between a fused amp billing option and a power usage***
19 ***metering option?***

20

21 Q WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

22

23 A. BellSouth's response is "no", BellSouth does not support the Joint
24 Petitioners claim that they should be entitled to choose what billing
25 methodology BellSouth uses to assess DC power charges due to the

1 additional costs that are inherent in a usage-based billing methodology
2 (i.e., the measuring system required to implement and administer this
3 type of billing). AC power should continue to be billed on a per breaker
4 ampere basis in accordance with the amount of voltage requested (i.e.,
5 120V, 240V or 277V) and whether the type of power requested is for
6 single phase or triple phase AC power.

7
8 Q. DOES BELLSOUTH'S PROPOSED LANGUAGE PROVIDE NO
9 CONSIDERATION FOR POWER INFRASTRUCTURE CHARGES
10 ALREADY PAID? IN OTHER WORDS, HAS THERE EVER BEEN AN
11 INSTANCE IN WHICH A CLEC WOULD HAVE PAID AC POWER
12 INFRASTRUCTURE CHARGES ON AN ICB OR NONRECURRING
13 BASIS?

14
15 A. No. To my knowledge, there has never been an instance in which a
16 CLEC would have paid for AC power infrastructure on an ICB or NR
17 charge basis. Furthermore, no CLEC has ever approached BellSouth
18 and requested that it be permitted to install its own DC power plant in
19 BellSouth's premises. This is likely due to the costliness of installing a
20 DC power plant in a central office.

21
22 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

23
24 A. Yes.

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BELLSOUTH TELECOMMUNICATIONS, INC.
DIRECT TESTIMONY OF P.L. (SCOT) FERGUSON
BEFORE THE TENNESSEE REGULATORY AUTHORITY
DOCKET NO. 04-00046
JUNE 25, 2004

- Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC AND YOUR BUSINESS ADDRESS.
- A. My name is Scot Ferguson. I am employed by BellSouth Telecommunications, Inc. ("BellSouth") as Manager – Network Interconnection Operations. In this position, I handle certain issues related to local interconnection matters, primarily operations support systems ("OSS") My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.
- Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.
- A. I graduated from the University of Georgia in 1973, with a Bachelor of Journalism degree. My professional career spans over 30 years with Southern Bell, AT&T, BellSouth Corporation and BellSouth Telecommunications During that time, I have held positions of increasing responsibility in sales and marketing, customer system design, product management, training, public relations, wholesale customer support, and my current position in Network Interconnection Operations.

1 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

2

3 A. The purpose of my testimony is to provide BellSouth's position on a number of
4 unresolved arbitration issues in this docket. Specifically, I will provide testimony
5 on. Item 43 (Issue 2-25) – Access to Loop Makeup Information; Item 55 (Issue 2-
6 37) – Testing/Splicing Access to Dark Fiber Transport; and, Item 87 (Issue 6-4) –
7 Ordering Charges. Further, I will provide supporting evidence that the
8 interconnection agreement language proposed by BellSouth is the appropriate
9 language that should be adopted for this interconnection agreement by the
10 Tennessee Regulatory Authority (“Authority” or “TRA”).

11

12 Q. SINCE THE FILING OF THE ORIGINAL PETITION FOR ARBITRATION IN
13 TENNESSEE, HAVE THE PARTIES RESOLVED ANY OF THE ISSUES FOR
14 WHICH YOU WOULD NORMALLY TESTIFY?

15

16 A. Yes. Item 40 (Issue 2-22) regarding Network Interface Devices, and Item 42
17 (Issue 2-24) regarding Testing Access to Dark Fiber Loops, recently were settled
18 between the Parties.

19

20 Q. SINCE THE FILING OF THE ORIGINAL PETITION FOR ARBITRATION IN
21 TENNESSEE, HAVE ANY RECENT COURT DECISIONS RESOLVED ANY
22 OF THE ISSUES FOR WHICH YOU WERE PREPARED TO TESTIFY?

23

24 A. Yes. Item 55 (Issue 2-37) – Testing/Splicing Access to Dark Fiber Transport is
25 no longer an appropriate issue to arbitrate because BellSouth no longer has an

1 obligation under Section 251 of the Telecommunications Act of 1996 ("Act") to
2 offer Dark Fiber Transport as an unbundled network element ("UNE").¹

3
4 Q. PLEASE EXPLAIN.

5
6 A. On March 2, 2004, the United States Court of Appeals for the District of
7 Columbia Circuit vacated certain Federal Communications Commission ("FCC")
8 rules regarding UNEs that had been established by the FCC in its *Triennial*
9 *Review Order ("TRO")*.² *United States Telecom Association v FCC*, 359 F.3d
10 554 (D.C. Cir 2004), or *USTA II*. The FCC rules vacated by the D.C. Circuit
11 Court included the FCC rules requiring the unbundling of Dark Fiber Transport.
12 The D.C. Circuit Court summarized the vacated FCC unbundling rules as follows:

13
14 We vacate the Commission's subdelegation to state commissions of
15 decision-making authority over impairment determinations, which in the
16 context of this Order applies to the subdelegation scheme established for
17 mass market switching and certain dedicated transport elements (DS1,
18 DS3, and dark fiber). *We also vacate and remand the Commission's*
19 *nationwide impairment determinations with respect to these elements.*³

20

21 Q. WHAT IS THE EFFECTIVE DATE OF THE D.C. CIRCUIT COURT
22 OPINION?

23

24 A. The FCC rules regarding the unbundling of Dark Fiber Transport were vacated by
25 the D.C. Circuit Court effective June 16, 2004.

26

¹ Although it is BellSouth's position that this issue has been rendered moot, I nonetheless have included testimony on this issue as if the D C Circuit Court had made no ruling

² FCC Order 03-36 in CC Dockets 01-338, 96-98, and 98-147

³ *USTA II*, 359 F 3d at 594 (emphasis added)

1 Q DOES THE D C CIRCUIT COURT DECISION MEAN THAT BELL SOUTH
2 WILL NO LONGER OFFER TO CLECS PRODUCTS AND SERVICES THAT
3 ARE NO LONGER CONSIDERED TO BE UNBUNDLED NETWORK
4 ELEMENTS, SUCH AS DARK FIBER TRANSPORT?
5

6 A. Absolutely not. Rather, and as BellSouth has stated in recent carrier notifications,
7 public announcements and various pleadings, BellSouth is prepared to enter into
8 alternative service arrangements with CLECs that will allow CLECs to transition
9 from such “vacated elements” to equivalent replacement services at rates, terms
10 and conditions contained in a separate commercial agreement or contained in
11 applicable tariffs.
12

13 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS REGARDING THE
14 UNRESOLVED ISSUES IN THIS PROCEEDING?
15

16 A. Yes. BellSouth negotiated in good faith with the Joint Petitioners on the issues
17 that I address, and BellSouth developed its positions based upon previous findings
18 on these issues in other proceedings, as ruled by this Authority, the regulatory
19 bodies of the other eight (8) states in BellSouth's region, and/or the FCC.
20 BellSouth provided that justification and rationale for its positions in negotiations
21 with the Joint Petitioners, but previous rulings seem to have little relevance to
22 them. It is clear to BellSouth, as it should be to this Authority, that the Joint
23 Petitioners’ proposed language on these issues is simply language that the Joint
24 Petitioners *want*, and not language to which they are entitled
25

1 BellSouth previously filed its positions on these issues in its response to the Joint
2 Petitioners' Petition for Arbitration
3
4

5 ***Item 43 (Issue 2-25): Under what circumstances should BellSouth be required to***
6 ***provide a CLEC with Loop Makeup information on a facility used or controlled by***
7 ***another CLEC? (Attachment 2, Section 2.18.1.4)***
8

9 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?
10

11 A. Very simply, BellSouth should not be required to provide a CLEC's loop
12 information to a competing CLEC without the inquiring CLEC obtaining a Letter
13 of Authorization ("LOA") from the CLEC that currently is using the loop. The
14 CLECs established this regional policy in the Shared Loop Collaborative, which
15 works in conjunction with CCP, to protect CLEC information. As a result of this
16 policy mandated by the CLECs, BellSouth views a request by a CLEC for loop
17 makeup ("LMU") information on another CLEC's existing loop the same as it
18 views a CLEC's request for customer service record ("CSR") information on
19 another CLEC's end user – an LOA is required. BellSouth's proposed
20 interconnection agreement language properly defines the need for an LOA as a
21 means to protect CLEC information.
22

23 Interestingly, the Joint Petitioners do not propose *any* interconnection agreement
24 language regarding protection of LMU information
25

1 As the state regulatory bodies and the FCC all have previously ruled,⁴ BellSouth
2 complies with the nondiscriminatory access requirements to provide LMU
3 information for loops owned by BellSouth, and used either for BellSouth's own
4 customers or provided to the requesting CLEC. The LOA requirement was in
5 place when BellSouth's LMU process was reviewed and ruled compliant by this
6 Authority To protect *all* CLECs, BellSouth does not provide so-called "third-
7 party" loop information without an LOA, nor should it. The first time BellSouth
8 did so, any CLEC – including the Joint Petitioners – likely would be standing on
9 this Authority's doorstep to complain about BellSouth's actions.
10

11 Q. ON WHAT BASIS DOES BELLSOUTH TAKE ITS POSITION?
12

13 A. As previously stated, BellSouth's position is based on a decision made by the
14 CLECs in the Shared Loop Collaborative, which works in conjunction with CCP,
15 to protect CLEC loop information. As such, BellSouth considers its 'customer' to
16 be the CLEC for which the loop is provided, and not the end user for whom the
17 CLEC in turn is providing the service BellSouth has a responsibility – a
18 responsibility established by the CLECs – to protect information regarding its
19 customers' (in this case, the CLEC's) service records. The LOA, in general, is a
20 mechanism to ensure BellSouth that one CLEC really does want to allow another
21 CLEC to obtain information about its facilities or customers. LOAs have been
22 used successfully for years to protect sensitive information while still allowing
23 appropriate access to that information. In addition, this LOA requirement has

⁴ In its BellSouth 271 *Advisory Opinion to the Federal Communications Commission* (Docket No. 97-00309), at page 27, the Tennessee Regulatory Authority "unanimously voted that BellSouth is providing or generally offering nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) and, therefore, is in compliance with Checklist Item 2." Checklist Item 2 includes access to loop makeup information.

1 been in effect for some time, and, to the best of my knowledge, this is the first
2 time that it has been an arbitration issue.

3
4 In regard to loop makeup information, the FCC's 1999 *UNE Remand Order* is
5 very specific about what an incumbent Local Exchange Carrier's ("LEC's")
6 obligation includes,⁵ and providing third-party loop information is not one of
7 those obligations. BellSouth is compliant with the requirements of both the *UNE*
8 *Remand Order* and the nondiscriminatory access requirements of Section 271 as
9 ruled by the states and the FCC, and, further, as I explain in more detail below,
10 BellSouth is complying with the consensus of the CLECs in its region.

11
12 Q. WHAT HAS BEEN THE EVOLUTION OF THE REQUIREMENT FOR LOAS
13 RELATED TO LMU INFORMATION?

14
15 A. BellSouth first developed the LMU process in response to the *UNE Remand*
16 *Order* and in response to a CLEC-initiated change request (CR0361) submitted
17 through BellSouth's Change Control Process ("CCP"). As part of that initial
18 development, BellSouth simply adapted the same rules to loop makeup that
19 applied to CLECs viewing CSR information; i.e., CLECs could only view LMU
20 information for BellSouth's customers' loops, or for that requesting CLEC's own
21 customers' loops. In 2001, the CLECs *themselves*, through the Shared Loop
22 Collaborative,⁶ developed and approved the process as it exists today, including

⁵ See FCC 99-238 at ¶¶ 426-427

⁶ On January 26, 2000, a Line Sharing Collaborative was established to develop, with the mutual agreement of the so-called Data Local Exchange Carriers ("DLECs") and BellSouth, the processes and procedures required to implement Line Sharing to meet the requirements of the FCC 3rd *Report and Order* in CC Docket No. 98-147, and 4th *Report and Order* in CC Docket No. 96-98 released December 9, 1999 (Line Sharing Order). In response to CC Docket 98-147, the "Line Share Reconsideration Order," also known as the Line Splitting Order, the Line Splitting Collaborative was established on April 19, 2001. Due to

1 the provision whereby a CLEC can view another CLEC's LMU information *only*
2 *if there is an LOA*. Attached, as Exhibit SF-1, is a copy of the Letter Of
3 Authorization (LOA) for Line Splitting CLEC Information Package. It may also
4 be found at BellSouth's interconnection website:

5 <http://interconnection.bellsouth.com/guides/unedocs/loa.pdf>
6

7 It is my understanding that none of the Joint Petitioners is an active member of
8 the Shared Loop Collaborative, and that is understandable if none of the Joint
9 Petitioners has a market in shared loop products. It is also my understanding that
10 the Joint Petitioners *are* CCP members, and all CCP-member CLECs were
11 provided user requirements when the LMU process was originally developed
12 (CR0361, implemented in Release 7.0 on July 29, 2000) and when the LOA
13 requirements were added (CR0409, implemented in Release 10.3 on January 5,
14 2002). I have attached a copy of those original LMU requirements as Exhibit SF-
15 2 and the LOA requirements as Exhibit SF-3.

16
17 Q. IS IT CLEAR TO BELLSOUTH WHY THE JOINT PETITIONERS BELIEVE
18 BELLSOUTH IS OBLIGATED TO PROVIDE A CLEC'S LMU
19 INFORMATION TO ANOTHER CLEC WITHOUT A LETTER OF
20 AUTHORIZATION?

21
22 A. No. What *is* clear, however, is that Joint Petitioners want certain information they
23 feel they cannot get apparently because other CLECs might refuse to give

similarities in issues between Line Sharing and Line Splitting, it was agreed mutually in May 2001 to combine what was then seven outstanding central office-based/Remote Terminal based Line Sharing/Line Splitting collaboratives into a single "Shared Loop Collaborative "

1 permission via an LOA. If that were to be proven true, that lack of cooperation or
2 agreement among CLECs does not – and should not – involve BellSouth.

3
4 Any disagreement among the CLECs with respect to the viewing of LMU
5 information should be worked out among the CLECs, or brought before this
6 Authority independent of this Section 252 arbitration proceeding. If there is, in
7 fact, a problem between CLECs that inhibits the attainment of an LOA, it is *not*
8 the result of any action by BellSouth. If the Joint Petitioners believe that their
9 inability to access the information of other CLECs has some anticompetitive
10 effect, then the Joint Petitioners' quarrel is with those other CLECs – not with
11 BellSouth.

12
13 Although BellSouth has been placed in a curious 'gatekeeper' position by the
14 rules of the Telecommunications Act, BellSouth should not be required to provide
15 information without an LOA simply because the Joint Petitioners now disagree
16 with the policy established by the CLECs because they have concerns about
17 asking another CLEC for permission to view such information.

18
19 Q. HAS THERE BEEN A SIMILAR SITUATION REGARDING CLEC-TO-CLEC
20 TRANSACTIONS, AND, IF SO, HOW WAS IT HANDLED?

21
22 A. Yes. As I referenced in a previous answer, BellSouth requires LOAs when one
23 CLEC requests from BellSouth CSR information about another CLEC's end user
24 in an attempt to win that end user. A number of CLECs raised this CSR issue to
25 BellSouth as a concern – through the CCP.

1 BellSouth continued to maintain its compliance with Customer Proprietary
2 Network Information ("CPNI") requirements with respect to CSRs, but, at
3 BellSouth's suggestion, and by working through the CCP, the CLECs themselves
4 developed and approved a process to allow the reciprocal viewing of CSRs,
5 relieving BellSouth of the responsibility as watchdog over the process. Change
6 Request CR1633 (attached as Exhibit SF-4) is currently progressing through the
7 CCP, and BellSouth is awaiting a final response from the CLECs. If CR1633 is
8 prioritized by CCP ballot, it will be scheduled for implementation in a future
9 release.⁷ I would like to point out that one of the provisions of CR1633 – as
10 determined by the CLECs – is the requirement of "proper authorization defined as
11 end user authorization that complies with applicable state and federal law."

12
13 BellSouth suggests that the CLECs (including the Joint Petitioners) use the same
14 process within the CCP for working out the details of the third-party LMU issue.⁸
15 If the consensus of the CCP determines that the CLECs are agreeable to let each
16 other view LMU information on an unfettered-access basis and absolve BellSouth
17 of any liability, the CLECs should then submit a change request to the CCP
18 asking for a system change to allow it. Assuming appropriate prioritization by the
19 CLECs in accordance with CCP guidelines, and assuming no conflict with the
20 earlier decisions by the Shared Loop Collaborative, BellSouth will support the

⁷ The prior implementation of CR0184 and CR0246 gave CLECs the ability to view each other's CSRs for Resale and UNE-P end users, when the current CLEC grants that authorization. CR1633 expands the types of accounts for which CLECs can view CSRs.

⁸ Although an appropriate suggestion conceptually, the Joint Petitioners – and this Authority – should not lose sight of the fact that a group of CLECs – through the Shared Loop Collaborative – has already determined that LOAs for LMU is an appropriate mechanism to protect the CLECs. It is likely that the participants in the Shared Loop Collaborative (who are also CCP members) would play a large part in determining any changes to the current requirements for LOAs.

1 change and will be relieved of its watchdog responsibilities in the LMU arena as
2 in the CSR arena.

3
4 Q. HOW DOES BELL SOUTH WANT THIS AUTHORITY TO RESOLVE THIS
5 ISSUE?

6
7 A. BellSouth requests that the Authority order that BellSouth's proposed language on
8 this issue be adopted as the appropriate language for this interconnection
9 agreement. There is nothing to support the Joint Petitioners' position statement
10 that BellSouth should be required to provide this information in the absence of
11 authorization from the CLEC for which BellSouth is currently providing the loop,
12 and this Authority certainly should not order BellSouth to implement a change in
13 an existing process (to satisfy only the Joint Petitioners) that countermands the
14 current regional process that was developed by the CLECs.

15
16 Further, this Authority should support BellSouth's suggestion that if the Joint
17 Petitioners wish to pursue this issue, they should do so under the auspices and
18 guidelines of the CCP and/or Shared Loop Collaborative, thereby allowing
19 BellSouth to continue to abide by the current Shared Loop Collaborative-
20 approved rules regarding LMU information until such time as BellSouth is
21 properly relieved of that responsibility by consensus of the CCP and/or the Shared
22 Loop Collaborative.

1 *Item 55 (Issue 2-37): What terms should govern CLEC access to test and splice Dark*
2 *Fiber Transport? (Attachment 2, Section 6.4.2)*

3
4 Q. PLEASE PROVIDE BELLSOUTH'S POSITION ON THIS ISSUE.

5
6 A. In light of the D.C. Circuit Court's vacatur of the FCC's unbundling rules for dark
7 fiber transport, and as I stated at the beginning of my testimony, this issue has
8 been rendered moot. BellSouth is no longer obligated under Section 251 of the
9 Act to provide Dark Fiber Transport as an unbundled network element (UNE).
10 Consequently, the rules regarding access to a UNE that no longer exists are
11 irrelevant. Therefore, this issue is no longer appropriate for Section 252
12 arbitration.

13
14 However, if the relevant FCC rules had not been vacated, BellSouth's position on
15 this issue is the same as that of recently settled Item 42 (Issue 2-24) concerning
16 testing and testing access for dark fiber loops. BellSouth provides
17 nondiscriminatory access to dark fiber transport in conformance with FCC
18 requirements,⁹ and the Joint Petitioners' proposed language seeks to impose on
19 BellSouth obligations that exceed those requirements.

20
21 As offered in its proposed language for Attachment 2, Section 6.4 2, BellSouth
22 will provide "appropriate interfaces" to serve as testing access points for dark
23 fiber transport, and those points will be located at the end points of the dark fiber
24 transport (i.e., at the CLEC's collocation arrangements in the two BellSouth

⁹ 47 CFR §51.319(d)

1 central offices between which the dark fiber transport extends¹⁰). These are the
2 only points appropriate – or necessary – for a CLEC to access BellSouth's dark
3 fiber transport.

4
5 Further, and as with all UNEs, BellSouth is responsible for the ongoing
6 maintenance and testing of the dark fiber transport after the CLEC's acceptance of
7 the transport facility, because BellSouth owns the transport facility. If,
8 subsequent to CLEC acceptance, there is a suspected trouble, and that trouble is
9 not within the CLEC's own network or facilities, the CLEC should report the
10 trouble to BellSouth, and BellSouth will isolate and correct the trouble in
11 accordance with BellSouth's obligation to provide maintenance and repair
12 services in a nondiscriminatory manner. There is no such obligation for
13 BellSouth to provide to the CLECs the access they seek in this proceeding, and
14 the Joint Petitioners do not – and cannot – offer any specific FCC standard that
15 proves that they are entitled to more than what BellSouth currently provides, and
16 commits to provide in the future.

17
18 Regarding splicing, BellSouth does *not* agree that it must allow the CLECs to
19 splice BellSouth's dark fiber transport at *any* place under *any* circumstances other
20 than at the end points of the transport facility at the CLEC's collocation
21 arrangement.

22

¹⁰ 47 CFR §51.319(d)(1)(i). Dark fiber transport is defined as incumbent LEC optical transmission facilities that provide telecommunications services between wire centers owned by incumbent LECs or requesting telecommunications carriers.

1 Q. WHAT ARE BELL SOUTH'S CONCERNS WITH THE JOINT PETITIONERS'
2 PROPOSED LANGUAGE?

3
4 A. The Joint Petitioners are proposing language that presumes that they will have
5 testing access to BellSouth's dark fiber transport facilities at times and places of
6 their own choosing, regardless of the potentially harmful impacts to BellSouth's
7 and other CLECs' services that are also provisioned in those places. BellSouth is
8 under no obligation to provide to CLECs the ability to enter those places, such as
9 BellSouth's splice cases, manholes, vaults, remote terminals, or any other similar
10 point where a CLEC might wish to access and test dark fiber transport facilities.¹¹

11
12 CLECs should not have freedom of access to "any technically feasible point"
13 according to how the Joint Petitioners appear to be defining it with their proposed
14 language. To allow such access would render BellSouth incapable of maintaining
15 its own facilities (since any CLEC could take whatever actions it decided were
16 appropriate in any given situation), and would ultimately lead to more frequent
17 and longer service interruptions as more and more "hands" were in BellSouth's
18 network

19
20 The network security issues created by such unfettered CLEC access are
21 undoubtedly obvious to this Authority – and should be to the Joint Petitioners. It
22 is also my opinion that CLECs other than the Joint Petitioners would have
23 concerns about BellSouth allowing the Joint Petitioners into such places (e.g.,
24 splice cases) where those other CLECs also have services provided by BellSouth

¹¹ 47 CFR §51.319(d)

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Regarding the splicing element of this issue, the FCC, in its *Triennial Review Order* (“TRO”),¹² defined splicing of cable as one of a number of routine network modifications required to be performed by the ILEC (BellSouth) – not the CLEC. In addition to the FCC’s ruling, the same network security issues discussed above undermine the CLECs’ argument that BellSouth should allow CLECs unfettered access to its network for purposes of splicing. Let me make it clear, however, that a CLEC may choose to splice its *own* fiber optic facilities to the dark fiber transport that the CLEC acquires from BellSouth as long as that splicing is done only at the end points of the dark fiber transport (i.e., the CLEC’s collocation arrangements)

Q. IS BELLSOUTH ALLOWED UNFETTERED ACCESS TO CLEC COLLOCATION SPACES?

A. Absolutely not. Despite the fact that CLEC collocation spaces are located in BellSouth’s central offices, BellSouth does not have access except under authorized circumstances, and with CLEC accompaniment. BellSouth certainly understands the CLECs’ position because the reasons that CLECs will not allow BellSouth unfettered access are the same reasons BellSouth should not be forced to allow unfettered access to the CLECs – security and network service reliability. It is not intended as a punitive measure against either party. It just makes sense

¹² See *TRO*, at ¶¶630-638

1 Q. WHAT SHOULD THIS AUTHORITY DO TO RESOLVE THIS ISSUE?

2

3 A. The Authority should rule that this issue is moot in light of the vacatur of certain
4 FCC rules established in the *TRO*. Alternatively, BellSouth's proposed language
5 regarding testing of dark fiber transport is compliant with pre-*TRO* FCC rules,
6 and should be adopted for the interconnection agreement. BellSouth will allow
7 the CLECs to test dark fiber transport at the appropriate end points at the CLEC's
8 collocation arrangements.

9

10 Further, and in light of the D.C. Circuit Court's vacatur of the FCC's dark fiber
11 unbundling rules, there should be no requirement to include any language that
12 allows splicing by the CLECs of BellSouth's dark fiber transport, except under the
13 circumstance I described in an earlier response regarding CLECs' splicing of their
14 own fiber optic facilities

15

16

17 *Item 87 (Issue 6-4): Should BellSouth be allowed to assess manual service order*
18 *charges on CLEC orders for which BellSouth does not provide an electronic ordering*
19 *option? (Attachment 6, Section 2.6)*

20

21 Q. PLEASE PROVIDE BELL SOUTH'S POSITION ON THIS ISSUE?

22

23 A. BellSouth is not obligated to provide electronic ordering capability for every
24 product or service for which a CLEC may submit a Local Service Request
25 ("LSR"). Consequently, if a particular product or service cannot be requested

1 electronically, BellSouth rightfully may recover its costs by charging a CLEC a
2 manual service ordering (or "SOMAN") charge.

3
4 The only exceptions occur when: 1) a product or service that is electronically
5 orderable by BellSouth's retail unit is not orderable electronically by a CLEC, or,
6 2) when a product or service normally orderable electronically by a CLEC cannot
7 be ordered electronically due to a temporary malfunction of BellSouth's OSS.
8 Under both of those circumstances, BellSouth will charge the CLEC the lower
9 mechanized service ordering (or "SOMECH") charge.

10
11 Q. UPON WHAT DOES BELL SOUTH BASE ITS POSITION?

12
13 A. BellSouth received its first guidance on this issue in 1999. In a clarification letter
14 following one of the FCC's early rulings on a BellSouth long-distance application,
15 then-Chief of the FCC's Common Carrier Bureau, Lawrence Strickling, notified
16 BellSouth that certain types of CLEC requests were excluded from the electronic
17 ordering requirement. I have attached a copy of that letter as Exhibit SF-5.

18
19 The issue of electronic ordering capability was also considered by all of the state
20 regulatory bodies during each of their BellSouth Section 271 proceedings,¹³ and
21 the FCC reaffirmed its position (i.e., the information contained in the Strickling
22 letter) in all three of its orders granting approval of the BellSouth long-distance
23 applications.¹⁴ It is notable that *none* of the state regulatory bodies or the FCC

¹³ This Authority considered this issue under Checklist Item 2. As cited in footnote 4, the TRA found BellSouth to be compliant with Checklist Item 2.

¹⁴ *Georgia/Louisiana 271 FCC Order 02-147* (WC Docket No. 02-35), May 15, 2002, at ¶¶149-150, *Multistate 271 FCC Order 02-260* (WC Docket No. 02-150), September 18, 2002, at ¶155, and *Florida/Tennessee 271 FCC Order 02-331* (WC Docket No. 02-307), December 19, 2002, at ¶95.

1 ruled that BellSouth must offer the lower SOMECH charge in the event that a
2 product or service is not designed for electronic request by the CLECs. It is also
3 notable that the FCC recognized in its BellSouth 271 *Georgia/Louisiana Order*¹⁵
4 that “BellSouth properly designs its systems so that a minimal number of orders
5 [products] cannot be ordered electronically.”

6
7 BellSouth is aware of its obligation to facilitate electronic ordering, and the FCC
8 has ruled repeatedly that BellSouth is compliant in that regard. In fact, the FCC
9 has never ordered BellSouth to provide 100% electronic orderability to CLECs,
10 nor has the FCC established *any* percentage as a threshold that BellSouth must
11 meet in order to be compliant.

12
13 Further, BellSouth's *manual* ordering processes were scrutinized during the state
14 and federal 271 cases, and also were found to be compliant and
15 nondiscriminatory. Any manual LSRs submitted by the CLECs are subject to
16 Service Quality Measurement (“SQM”) benchmarks for which BellSouth must
17 pay penalties if not met. There should be no concern on the Joint Petitioners’ part
18 that BellSouth's manual handling of low volumes of non-mechanized requests
19 will cause undue delay in provisioning those requests.

20
21 Q. DOES BELL SOUTH HAVE AN INCENTIVE TO ASSESS A SOMECH
22 CHARGE VERSUS A SOMECH CHARGE?

23

¹⁵ *Georgia/Louisiana 271 FCC Order 02-147* (WC Docket No. 02-35), May 15, 2002, at ¶149

1 A. No. Both SOMAN and SOMECH charges are cost-based rates approved by the
2 state regulatory bodies to allow BellSouth to recover its costs to process manual
3 and mechanized CLEC requests. The SOMAN charge is higher because it costs
4 BellSouth more to process a manual order, but BellSouth does not gain increased
5 profits by charging a SOMAN charge versus a SOMECH charge.

6
7 Q. WHAT ARE THE REASONS THAT CERTAIN BELL SOUTH PRODUCTS
8 AND SERVICES CANNOT BE REQUESTED ELECTRONICALLY BY THE
9 CLECS?

10
11 A. Although BellSouth has worked diligently through the CCP and with several state
12 commissions on various flow-through/mechanization improvement initiatives that
13 resulted in mechanized ordering of a number of products and services, there are
14 two primary reasons why electronic ordering still might not be available for
15 certain products and services: 1) low volume of CLEC requests for those products
16 or services does not justify the cost to BellSouth to mechanize ordering; or, 2)
17 order mechanization is technically infeasible.

18
19 Q. PLEASE ELABORATE ON THOSE REASONS.

20
21 A. Currently, the ordering for the vast majority of BellSouth's wholesale product and
22 service offerings is mechanized.¹⁶ Translated into actual LSR volume and based
23 upon 1st quarter 2004 figures, CLECs regionally are submitting electronically

¹⁶ See Exhibit SF-6 The Flow-through Matrix from BellSouth's PMAP website describes which products and services must be ordered manually, and which can be ordered electronically

1 approximately 97% of all LSRs, on average monthly volumes of over 887,000
2 total LSRs.

3
4 Although BellSouth might not of its own accord choose to mechanize one of the
5 few remaining low-volume request types, the CLECs have an option available to
6 them even in such a situation. A CLEC may submit to the CCP a request to
7 mechanize a specific type of request. If technically feasible and if the CCP
8 accepts the change request, the member CLECs would then prioritize the change
9 request according to the quarterly ranking process outlined in the CCP. BellSouth
10 would then schedule the change into the appropriate software release according to
11 that ranking. It is noteworthy that the FCC praised BellSouth for its
12 “demonstrated willingness to automate the ordering for these orders despite their
13 low volumes.”¹⁷

14
15 Finally, there are a few low-volume request types remaining that cannot be
16 mechanized because BellSouth's OSS simply cannot be programmed to accept
17 them.

18
19 Q. HOW SHOULD THIS AUTHORITY RESOLVE THIS ISSUE?

20
21 A. This Authority should affirm its previous finding in BellSouth's Section 271 case
22 that BellSouth is compliant in providing nondiscriminatory access to its ordering
23 processes. In addition, and because it has a right to do so for cost recovery,
24 BellSouth should continue to be allowed to charge the SOMAN charge in the

¹⁷ *Georgia/Louisiana 271 FCC Order 02-147* (WC Docket No. 02-35), May 15, 2002, at ¶150

1 event that a product or service is not currently designed to be ordered
2 electronically. If the Joint Petitioners wish for a different scenario, they should
3 file a petition to establish a generic cost docket in which this issue of charges
4 would be fully evaluated – yet again.

5
6 Further, the Authority should adopt BellSouth's proposed language as that which
7 reflects BellSouth's current and, importantly, compliant process regarding the
8 billing of electronic and manual ordering charges. Finally, the Authority should
9 direct the Joint Petitioners to follow the CCP guidelines if there is a particular
10 product or service for which they wish to have BellSouth implement mechanized
11 ordering.

12

13 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

14

15 A. Yes.



Letter of Authorization (LOA) For Line Splitting

***Letter of Authorization (LOA) For
Line Splitting***

CLEC Information Package

(Version 4, October 30, 2003)



Letter of Authorization (LOA) For Line Splitting

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Letter of Authorization (LOA) For Line Splitting

Chapter 1.0: Introduction

1.1 Purpose and Scope

This document provides procedures to be utilized by the D/CLEC (Data/Competitive Local Exchange Carrier) for processing a Letter of Authorization (LOA) as it pertains to Central Office Based Line Splitting Service. The LOA process provides authorization for the DLEC LOA partner to submit a Loop Makeup (LMU) data request, High Frequency Spectrum Central Office (HFS CO) Based Unbundled Loop Modification (ULM) requests, and LSRs (Local Service Requests) associated with Line Splitting Unbundled Network Element Service on behalf of the Voice CLEC LOA Partner.

Please contact your BellSouth CARE Team representative if you have questions about the information contained herein

1.2 Disclaimer Statement

The information contained in this document is subject to change. BellSouth will provide notification of changes through the BellSouth Line Sharing/Splitting Collaborative and through the BellSouth Carrier Notification process.

1.3 Version History / Control

Any future modifications, enhancements, and/or improvements that are made to this CLEC Information Package will be reflected accordingly in this section of the document.

Section	Date/Version	Description
All	01/08/02 – Version 1	Initial Version Release
LOA document added	02/15/2002 – Version 2	Updated Version Release
LOA Web Address Added	02/19/2002 – Version 3	Updated Version Release
All	10/30/2003 – Version 4	Update to the LOA process flow



Letter of Authorization (LOA) For Line Splitting

Chapter 2.0: Overview

The LOA process for Line Splitting was developed by the CLEC Collaborative members in a unified effort to support and authorize BellSouth's role in the release of the Voice CLEC's end user information to their LOA partner (DLEC). This LOA allows the DLEC to view Loop Make Up (LMU) data, order HFS CO Unbundled Loop Modification and order Line Splitting of an end user's loop that belongs to the Voice CLEC for the purpose of provisioning Line Splitting Service.

The executed LOAs will be housed on the Internet for the convenience of all parties involved. The BellSouth Web Master (web master) will create Internet addresses/folders and passwords for each of the CLECs and DLECs participating in LOA partnerships. However, each time that a new Line Splitting partnership is executed, BellSouth must receive an electronically signed LOA from the new Line Splitting Voice CLEC and DLEC partners. The parties agreeing to the LOA must provide electronic signatures on the LOA.

The LOA will be provided via email to the BellSouth CLEC Care Local Support Manager (LSM). The LSM will forward the LOA to the web master via email. The web master will place a copy of the signed LOA document in each party's folder. The folder is password protected. The CLEC for whom the folder has been created will have the password for their respective folder. The only other access to the folder will be a BellSouth Billing Subject Matter Expert.

Changes to folder content may only be processed through the LSM. The CLEC and DLEC will not be permitted to remove documents from the folders. If a newly executed LOA is to be added or if an existing LOA is to be cancelled, the cancellation or new LOA will be provided to the LSM. The same LOA document will be used to notify BST of cancellation. Appropriate fields have been added to make cancellation simple. Appropriate selections with electronic signatures must be made to indicate the cancellation. If a cancellation is received from the CLEC/DLEC a copy of the cancellation will be placed in both parties' respective folders.

Web site for folders.

<http://interconnection.bellsouth.com/2partyagree/>



Letter of Authorization (LOA) For Line Splitting

Chapter 3.0: General Guidelines

3.1 Availability

BellSouth offers this service in all nine states within the BellSouth region

CLEC/DLECs must provide LOAs when they are participating in a Line Splitting partnership. The LOA must be on file prior to the DLEC partner issuing requests for LMU, HFS CO ULM, or LSRs associated with Line Splitting Service

The LMU (manual or electronic) and Line Splitting Local Service Requests will have three fields associated with executed LOAs. The fields must be populated with the Voice CLEC information as follows

- LSP AUTH **Name** - Name of the person from the Voice CLEC that is providing authorization to the Data LEC
- LSP AUTH **CC** - Company Code of the Voice CLEC
- LSP AUTH **Date** - Date that the Voice CLEC provided authorization to the DLEC

The voice CLEC will provide the DLEC with the Local Service Authorization Code (LSP AUTH) to be used with BellSouth systems and documents when provisioning Line Splitting Service to voice CLEC end users and represents the agreement between the DLEC and CLEC. The LSP AUTH is the voice CLEC Company Code (CC) that appears on the voice CLEC End User Customer Service Record (CSR). The LOA will list all Company Codes for the specified voice CLEC to which the DLEC is authorized

3.2 Contract Specific Provisions

The LOA is not intended to modify the terms and conditions of the BellSouth Interconnection Agreement. Please refer to the BellSouth Interconnection Agreement for specific language, terms, and conditions applicable for Line Splitting

D/CLECs must provide LOAs when they are participating in a Line Splitting partnership. The LOA must be on file **prior to** the DLEC partner issuing requests for LMU, HFS CO ULM, or LSRs associated with Line Splitting Service



Letter of Authorization (LOA) For Line Splitting

Chapter 4.0: Process Guidelines for LOA

4.1 The Letter of Authorization Process

The CLEC will obtain a copy of a LOA from the Collaborative Web Site, shown below and will obtain an electronic signature from both parties. The signed LOA will be provided to the LSM via e-mail. The LSM will provide all documents to the BellSouth web master who will post a copy in each party's folder. The submitting party/parties will receive a confirmation from the LSM that the LOA has been posted and the date of posting.

http://www.interconnection.bellsouth.com/markets/lec/line_sharing_collab/index.html

4.2 Internet Folder for LOAs

If a folder has not been created for the submitting parties, the LSM will request the web master to create a folder and obtain passwords for the party/parties involved. This will involve a ten (10)-business day turn-around. However, the web master will acknowledge that the document has been received by returning an email of acknowledgement to the LSM. The password will be provided to the new LOA participant/s as soon as the web master has created appropriate folder/s and provided the information back to the LSM. The web master will place a copy of the new LOA in each participating party's folder.



Letter of Authorization (LOA) For Line Splitting

4.3 Electronic Signatures

To Create an Electronic Signature:

To create the electronic signature the computer must be connected to a scanner to complete the following detailed procedure.

How to create and insert a scanned picture on to the LOA form.

- First Create a signature legibly on white paper and scan the signature
- Save the scanned image with a .jpg (jpeg) extension by giving it a unique name

To edit the Signature Picture before inserting:

- When the image appears in Microsoft Photo Editor, make any changes you want
- For example you can crop the picture, add special effects to it, and adjust its brightness, contrast and color
- When finished editing the picture, save changes and then click Exit
Note. If Microsoft Photo Editor is not installed, run the Setup program again and install it
- Now Open the LOA Word document
- Position the insertion point where you want to insert the scanned signature
- On the insert menu you will point to "picture" and then Click "from file" and this will give you the ability to access the picture that you have saved. You will double click on the signature picture to insert on to the LOA

4.4 Web Site for LOAs

Users please take caution in selecting your proper folder. If you should mistakenly select the wrong folder, you must clear your browser's history file. These instructions can be found on the Two Party Agreement web site

<http://interconnection.bellsouth.com/2partyagree/>



Letter of Authorization (LOA) For Line Splitting

Chapter 5.0: Acronyms

CLEC	Competitive Local Exchange Carrier
CO	Central Office
DSL	Digital Subscriber Line
DLEC	Data Local Exchange Carrier
Jpeg	Soft Ware for creating pictures
LMU	Loop Make Up
LOA	Letter of Authorization
LSM	Local Support Manager
LSP AUTH	Local Service Provider Authorization
UNE	Unbundled Network Element



ENCORE USER REQUIREMENTS FOR *MECHANIZATION OF LOOP MAKE-UP FOR CLEC XDSL*

**ENC7762.DOC
DOCUMENT VERSION 2.0
APRIL 28, 2000**

**Created: 12/06/1999
Revised: 4/28/2000**

PRIVATE/PROPRIETARY: No disclosure outside BellSouth except by written agreement.

FEATURE DESCRIPTION

The mechanized Loop Make-Up Process for CLEC XDSL will provide Loop "Make-Up" detail to the requesting CLEC. The CLEC will use this information to determine if an end user's loop is capable of supporting their implementations of XDSL services.

Relative to CLEC XDSL service, the LM Scope includes the following.

- a) Allowing CLECs' to request Loop Makeup detail on existing facilities, (Telephone Number or Circuit ID, - identified), when the facilities are owned by the submitting CLEC or BellSouth
- b) Allowing CLECs to request Loop Makeup detail on new/spare facilities owned by BellSouth
- c) Allowing CLECs to reserve new/spare facilities for a "standard" timeframe.
- d) Allowing CLECs to cancel reservations for new / spare facilities within the standard timeframe.
- e) Allowing CLECs to select or input a NC/NCI/SECNCI "codeset reference" that will be used to "fine tune" the facility types returned in the LM. (This "codeset reference" will NOT be used to "qualify (yes/no)" a facility. It will be used only to return a focused, abbreviated list of facilities that are a best match to meet the NC/NCI/SECNCI codes on the request.)

The CLEC XDSL pre-order LM transaction will allow the user to input / select :

- a) A validated address and Telephone Number, (for requests involving existing facilities).
- b) A validated address and Circuit Identifier, (for requests involving existing facilities).
- c) A validated address only, (for requests involving new / spare facilities)
- d) A NC / NCI / SECNCI codeset OR equivalent that identifies
 - 1) UNE ADSL 2-wire, or
 - 2) UNE HDSL 2 or 4 wire service,
 - 3) UNE UCL-Short (2 or 4 wire)
 - 4) UNE UCL-Long (2 or 4 wire).
- e) Up to ten (10) loops (quantity) for which Loop Make-Up detail is desired (Applicable to New / Spare facilities only)

The LM process for CLEC XDSL shall respond with detailed information and functionality as specified in the Requirement section of this document

USER REQUIREMENTS

Requirement #	Description
UR7762.0001	The user shall be able to identify and electronically submit a LM request for CLEC XDSL.
UR7762.0002	The User will receive a positive acknowledgement that the Loop Inquiry and / or reservation request has been completed.
UR7762.0003	<p>The user shall receive common English "message detail" responses, as illustrated below:</p> <ul style="list-style-type: none"> ▪ Account Information Not Found ▪ Address Not Found ▪ CC Not Valid ▪ CCNA Not Valid ▪ TN / Circuit Format Invalid ▪ TN / Circuit ID not found ▪ Insufficient Information To Process Query ▪ Invalid Input Combination (NC/NCI/SECNCI) ▪ Transaction Successful ▪ Not Authorized to access data. (Restricted Service CLEC/ BST does not own / control the account) ▪ System Unavailable ▪ No Mechanized Information Available For This Request ▪ Not authorized to cancel Reservation request (Not owner (CLEC) of the reservation)
UR7762.0004	<p>The user shall have the ability to perform a preorder transaction to receive Loop Makeup detail for CLEC XDSL UNEs</p> <p>(The user shall use this detail to evaluate if the loop is capable of supporting their specific XDSL or UCL service implementations)</p>
UR7762.0005	The user shall utilize the Pre-order "address validation" process prior to submitting a request for Loop Qualification / Loop Makeup (LM)
UR7762.0006	<p>The user shall have the data input for Telephone Number and Circuit ID, - FORMAT validated, based upon the following:</p> <ul style="list-style-type: none"> ▪ <u>Telephone Number</u> The format is valid if it conforms to rules associated with SOER – S&E, TN format 009 ▪ <u>Circuit ID</u> The format is valid if it conforms to rules associated with SOER – S&E, CLS format 007 or CLT format 007
UR7762.0007	If the user submission for LM involves an invalid Telephone Number, Circuit ID,

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	and/or Address detail, the user shall receive a message. The message shall identify the invalid element(s) to the user.
UR7762.0008	As a part of the LM process <u>for new/spare facilities</u> , the user shall be able select / input a NC/NCI/SECNCI “codeset <u>reference</u> ” that will be used to “fine tune” the facility types returned in the LM.
UR7762 0009	As a part of the LM interface <u>for new/spare facilities</u> , the user shall be notified that the input / selection of the codeset reference in UR7762 0008 above will be used only to return a focused, abbreviated list of facilities that are a best match to meet the NC/NCI/SECNCI codes on the request. The user shall be further notified that the use of the “codeset reference” should NOT be interpreted as an indication that the returned facilities are suitable or “qualifies” for any specific use.
UR7762.0010	For any given LM query, after initial data is input by the user (to initiate the query process), the user shall not be required to re-key valid data associated with sequential queries in the overall process.
UR7762.0012	In association with a given LM request, the user shall select / input data based upon the following rules a) A validated address and Telephone Number <u>OR</u> a validated address and Circuit Identifier. (For requests involving existing facilities). b) A validated address only (For requests involving new / spare facilities). c) A NC / NCI / SECNCI codeset <u>OR</u> equivalent that identifies: 1) UNE ADSL 2-wire, 2) UNE HDSL 2 wire service 3) UNE HDSL 4 wire service, 4) UNE Copper Loop – Short, 2 wire 5) UNE Copper Loop - Short , 4 wire 6) UNE Copper Loop –Long , 2 wire 7) UNE Copper Loop –Long , 4 wire (For new or existing requests.) d) The number of loops (quantity) for which Loop Make-Up detail is desired (For New / Spare facilities only)
UR7762 0013	The user shall consider their request for LM as valid, when it conforms to one of the following scenarios A) The request involves existing “ working service” which is owned by the issuing CLEC or BST. <u>Or</u> B) The request involves new/ (BST spare) facilities

	<p><u>AND</u></p> <p>C) Involves a single premise address on any given Loop Make-up request</p>																										
UR7762 0014	If the user request for LM detail is associated with existing working service which is NOT owned by the issuing CLEC or BST, then the user shall receive a message. The message shall indicate that the submitting user is not authorized to receive the requested data for the specified account.																										
UR7762 0016	As a part of the LM process <u>for new/spare facilities</u> , the user shall be able to indicate up to ten (10) loops for which Make-up is desired																										
UR7762.0017	As a part of the LM process <u>for new/spare facilities</u> , the user shall be able to reserve up to ten (10) loops for which Make-up is desired																										
UR7762 0018	As a part of the LM process <u>for RESERVING new/spare facilities</u> , the user shall be notified that the facilities will be reserved for 4 days (96 hrs)																										
UR7762 0019	Not electronically supported for Phase 1. Restated as assumption. (5.7) to establish intent regarding future release.																										
UR7762 0020	Not electronically supported for Phase 1. Restated as assumption (5.8) to establish intent regarding future release.																										
UR7762.0021	<p>The users' response from the CLEC XDSL Loop Make-Up request shall include loop data currently available in the BST LFACs system, - based upon whether an individual loop conforms to service specific conditions listed in UR7762 0065 through UR7762 0070</p> <p>This returned detail includes the list of items shown below in the LFACS Loop Data section, in addition to any items shown in the OTHER section, which are not implied / referenced by data in the LFACs section</p> <p><u>LFACS LOOP DATA Section</u></p> <table> <tr> <td>LOOP{</td><td>Loop aggregate, 1 per loop</td></tr> <tr> <td> LPSTAT [7]</td><td> Status of assembled facility</td></tr> <tr> <td> RTF [1]</td><td> Receive/Transmit Indicator</td></tr> <tr> <td> SSC [1]</td><td> Single Subscriber Carrier Indicator</td></tr> <tr> <td> FN{</td><td> Segment Aggregate, 1-9 per loop</td></tr> <tr> <td> CA [10]</td><td> Cable identifier</td></tr> <tr> <td> PR [4]</td><td> Pair Identifier</td></tr> <tr> <td> ABP [4]</td><td> Assignable Binding Post</td></tr> <tr> <td> TEA [50]</td><td> Terminal Identifier</td></tr> <tr> <td> TRMED [9]</td><td> Transmission Medium Type</td></tr> <tr> <td> LMU{</td><td> Loop Makeup Aggregate, 1 per segment</td></tr> <tr> <td> LMSTAT [40]</td><td> Loop Makeup Status</td></tr> <tr> <td> LUINT [2]</td><td> Length Unit</td></tr> </table>	LOOP{	Loop aggregate, 1 per loop	LPSTAT [7]	Status of assembled facility	RTF [1]	Receive/Transmit Indicator	SSC [1]	Single Subscriber Carrier Indicator	FN{	Segment Aggregate, 1-9 per loop	CA [10]	Cable identifier	PR [4]	Pair Identifier	ABP [4]	Assignable Binding Post	TEA [50]	Terminal Identifier	TRMED [9]	Transmission Medium Type	LMU{	Loop Makeup Aggregate, 1 per segment	LMSTAT [40]	Loop Makeup Status	LUINT [2]	Length Unit
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LUINT [2]	Length Unit																										

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	<p>NLD [2] Load Point Number, Null if Non-loaded COIL [4] Load Coil Type ES [9] End Section LDSP [15] [9] Load Spacing BO{ Build Out Aggregate, 1-2 per LMU BOCAP [5] Build Out Capacity BORES [5] Build Out Resistance BOOFF [9] Build Out Offset SPL{ Splice Section Aggregate, 1-10 times per LMU GA [7] Gauge LGTH [9] Length UBA [1] Type of cable CAPAC [5] Capacitance BTOFF [9] Bridge Tap Offset</p> <p><u>OTHER</u> Loop composition (Copper/Fiber etc , length and wire gauge of each) Bridge taps (total kilofeet) Load coils (Presence) Pair gain devices DAML (Presence) Digital Loop Carrier (DLC) (Presence) Cross Box Identifier</p>
UR7762 0022	As a result of a user LM request, if no loop Make-Up data is found, the user shall receive a message to that effect.
UR7762 0023	Collectively, the user shall be able to submit at least 4,000 LM requests per "busy hour"
UR7762.0024	The user shall receive an average response time of 2 seconds or less, per individual user initiated query associated with the LM.
UR7762 0025	As a result of a user LM request, if <u>any</u> loop make-up data is found, the user shall have the detail referenced in UR7762.0021, returned to them.
UR7762.0027	The users' response from the Loop Make-Up request shall identify (in common English terms) the specific element label, in conjunction with retrieved data values associated with a given element.
UR7762 0028	As a part of the LM process <u>for RESERVING new/spare facilities</u> , the user shall be able to cancel their own reservations.
UR7762.0029	If a user attempts to cancel a reservation which, was initiated by a different user, the user requesting the cancellation will receive a message The message will indicate that the submitting user is not the owner of the reservation and are therefore not authorized to cancel the request
UR7762 0030	The user shall NOT be allowed to reserve facilities that are currently reserved

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UR7762.0035	Not electronically supported for Phase 1 Rephrased as assumption (5.6) to establish intent regarding future release.
UR7762.0041	In association with a user request for New/Spare loop reservations, the user shall receive a Facility Reservation Number (FRN). The FRN will be mechanically generated based upon the following format: CCCCZZZZZZMMDDYYYY With C being the CLEC identified and Z being a per-reservation unique value
UR7762.0065	User requests involving 2 or 4 wire Unbundled Copper Loops - <u>Short</u> (UCL-S), shall have facility data returned from LFACS which meet the following criteria (PER PAIR basis) <ul style="list-style-type: none"> ▪ The facility loop type/composition is COPPER ▪ The facility meets Resistance Design (RD) spec of 1300 Ohms or less ▪ The facility is non-loaded ▪ The total loop length is LESS than or equal to 18 kft ▪ Less than 6 kft of Bridged Tap is associated with the facility.
UR7762.0071	User requests involving 2 or 4 wire Unbundled Copper Loops - <u>Long</u> (UCL-L), shall have facility data returned from LFACS which meet the following criteria (PER PAIR basis) <ul style="list-style-type: none"> ▪ The facility loop type/composition is COPPER ▪ The facility may have up to 2800 Ohms of Resistance or less ▪ The total loop length is Greater than 18 kft ▪ Less than 12 kft of Bridged Tap is associated with the facility.
UR7762.0105	The user shall be able to print the FRN and results returned from a query
UR7762.0110	FORMAT EXHIBITS
	ID CLS - COMM LANG. CIRCUIT ID-SERIAL NO 007 CLS DATA FORMAT INCORRECT' CLS DATA MUST APPEAR IN THE FOLLOWING FORMAT /CLS 12 PLNT 123456 66 SB WHERE 12 = PREFIX (OPTIONAL) (1-2 ALPHANUMERICS) WHERE PL = SERVICE CODE (2 ALPHABETICS PRECEDED BY A PERIOD) WHERE NT = MODIFIER (2 ALPHABETICS OR 1 ALPHABETIC AND 1 ALPHANUMERIC) WHERE 123456 = SERIAL NUMBER (1-6 NUMERICS OF 1-999999 PRECEDED BY A PERIOD)

Created: 12/06/1999

Revised: 04/28/2000

	<p>WHERE 66 = SUFFIX (OPTIONAL) (1-3 NUMERICS OF 1-999 PRECEDED BY A PERIOD) WHERE SB = ASSIGNING COMPANY IDENTIFICATION (2 OR 4 ALPHABETICS PRECEDED BY A PERIOD)</p> <p>NOTE 1 THE ABSENCE OF THE SUFFIX DATA IS INDICATED BY 2 PERIODS BETWEEN THE SERIAL NUMBER AND THE ASSIGNING COMPANY IDENTIFICATION</p> <p>NOTE 2 EXAMPLE CLS 12 PLNT 123456 SB ON CABS ORDERS AND SOUTH CENTRAL BELL NON-CABS ORDERS, THIS EDIT IS ONLY PERFORMED ON INWARD (E,I,T OR X) AND RECAPPED ACTIVITY</p> <p>NOTE 3 WHEN THE SPECIAL ACTION INDICATOR IS D OR THE FIFTH CHARACTER OF THE BASIC CLASS OF SERVICE IS Q, THE ASSIGNING COMPANY IDENTIFICATION MAY APPEAR AS THREE ALPHABETICS</p> <p>-----</p> <p>FID CLT - COMMON LANGUAGE CIRCUIT ID - TN FORMAT</p> <p>007 CLT DATA MUST BE FORMATTED AS FOLLOWS</p> <p>/CLT 38 SBGS 404 477 3999 T22 123 WHERE 38 = PREFIX (OPTIONAL) (1-2 ALPHANUMERICS) WHERE SB = SERVICE CODE (2 ALPHABETICS PRECEDED BY A PERIOD) WHERE GS = MODIFIER (2 ALPHANUMERICS OF AA-ZZ OR A1-Z9) WHERE 404 = NPA (3 NUMERICS PRECEDED BY A PERIOD) WHERE 477 = CENTRAL OFFICE (3 NUMERICS PRECEDED BY A PERIOD) WHERE 3999 = LINE NUMBER (4 NUMERICS PRECEDED BY A PERIOD) WHERE T22 = EXTENSION NUMBER/TRUNK CODE (OPTIONAL) (2-5 ALPHANUMERICS PRECEDED BY A PERIOD) WHERE 123 = SEGMENT NUMBER (OPTIONAL) (1-3 ALPHABETICS OR NUMERICS OF 1-999 OR A-ZZZ PRECEDED BY A PERIOD)</p> <p>-----</p> <p>FID TN - TELEPHONE NUMBER</p> <p>009 TN DATA FORMAT INCORRECT'</p> <p>TN MUST APPEAR ACCORDING TO ONE OF THE FOLLOWING FORMATS</p> <p>A I2 1FB /TN 101 555-1234-1235 WHERE 101 = NPA (3 NUMERICS) (OPTIONAL) WHERE 555 = NXX (3 NUMERICS) WHERE 1234 = LINE NUMBER - LOWER RANGE (4 NUMERICS) WHERE 1235 = LINE NUMBER - UPPER RANGE (4 NUMERICS)</p>
--	---

	<p>OR,</p> <p>B I1 1FB /TN 101 555-1234 WHERE 101 = NPA (3 NUMERICS) (OPTIONAL) WHERE 555 = NXX (3 NUMERICS) WHERE 1234 = LINE NUMBER (4 NUMERICS)</p> <p>OR,</p> <p>C I3 1FB /TN 205 555-1111, 4333, 5555 WHERE 205 = NPA (3 NUMERICS) (OPTIONAL) WHERE 555 = NXX (3 NUMERICS) WHERE 1111= LINE NUMBER (4 NUMERICS) WHERE 4333= LINE NUMBER IN A SERIES (OPTIONAL) WHERE 5555= LINE NUMBER IN A SERIES (OPTIONAL)</p>
--	--



encDocUserReq
ENC15069 DOC
CMVC Version 1 1

ENCORE User Requirements for

Letter of Authorization for LMU to Support Line Splitting

**FINAL
ENC15069.DOC**

Version 3.0

September 7, 2001

CMVC Version 1.1

Created: 08/17/2001

Revised 09/07//2001



encDocUserReq
ENC15069 DOC
CMVC Version 1 1

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encDocUserReq
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1. SCOPE

1.1 Business Implications

1.1.1 Current Process

Current Process	
•	LMU (Loop Make-up) is provided when the Requester or BellSouth is the owner of the voice facility.
•	
•	
•	

1.1.2 Expected Process

Expected Process	
•	Continue to provide LMU when the requesting Carrier or BellSouth owns the voice account.
•	LMU will be provided on any request, when authorization is valid that is provided by the requesting Carrier.
•	Authorization is valid when data in LSP AUTH, LSP AUTHDATE and LSP AUTHNAME fields of the LSR are populated and the LSP AUTH is a valid match to the ownership of the account.



2.0 User Requirements

Requirement No.	User Requirement
UR15069.0010	BellSouth will continue to provide LMU (Loop Make-up) on all BellSouth accounts requested by a Carrier (C/DLEC) without requiring the LSP authorization fields to be input.
UR15069.0020	<p>The following new fields are required to provide authorization capability.</p> <ol style="list-style-type: none"> 1. LSP AUTH – 4 alphanumeric CC of CLEC granting the LOA 2. LSP AUTHDATE – 08 numeric. MMDDCCYY. Date the LOA was granted. 3. LSP AUTHNAME – 15 alphanumeric Name of the person from the CLEC who signed the LOA.
UR15069.0025	<ol style="list-style-type: none"> 1. When the requirements in UR15069 0020 are not met for the 3 new fields, system will return a message as stated below. LSP AUTH –CC of CLEC that is granting the LOA will be populated, else, return the following message. LSP AUTH MUST BE 4 ALPHANUMERIC 2. LSP AUTHDATE – Date the LOA was granted, must be populated as defined (MMDDCCYY), else, return the following message. LSP AUTHDATE FORMAT MUST BE NUMERIC 1. LSP AUTHNAME –Name of the person from the CLEC who signed the LOA. Require 15 alphanumeric characters or less, else return the following message LSP AUTHNAME FIELD SIZE MUST BE LESS THAN 16 CHARACTERS.
UR15069 0030	<p>When any one of the 3 new fields in requirement UR15069.0020 is populated, require that all three fields be populated else, return the following message to the Requester.</p> <p>LSP AUTHORIZATION COMBINATION INVALID AS ENTERED</p>



encDocUserReq

ENC15069 DOC

CMVC Version 1 1

Requirement No.	User Requirement
UR15069.0040	When LMU request is submitted for a facility not owned by BellSouth or the requester and valid <u>authorization is provided</u> within the request, LMU will be provided
UR15069.0050	When LMU request is submitted for a facility <u>not owned</u> by BellSouth or the requester and the field, <u>LSP AUTH, is blank</u> LMU will not be <u>provided</u> . Advise requester that "AUTHORIZATION IS REQUIRED FROM THE OWNER OF THE FACILITY".
UR15069 0060	When LMU request is submitted for a facility <u>owned by the requester</u> , no <u>authorization</u> is required to obtain LMU.
UR15069.0070	When LMU request is submitted and LSP AUTH is populated, <u>validate authorization data matches</u> the facility owner identification before providing LMU.
UR15069.0080	When LMU request is submitted and LSP AUTH is populated and authorization data does not match the facility ownership, advise the requester that "AUTHORIZATION DOES NOT MATCH FACILITY OWNERSHIP". <u>LMU not</u> provided until validation is passed.
UR15069.0090	Include storage capability for new fields, LSP AUTH, LSP AUTHDATE and LSP AUTHNAME along with existing fields.
UR15069.0100	LSP AUTH, LSP AUTHDATE and LSP AUTHNAME are not required to view BellSouth facilities.
UR15069 0110	Requirement deleted 09/-5/01



2.3 New or Revised Error Messages

Requirement No.	Error Message
UR15069.0025	<ul style="list-style-type: none"> • “LSP AUTH MUST BE 4 ALPHANUMERIC” • “LSP AUTHDATE FORMAT MUST BE NUMERIC” • LSP AUTHNAME FIELD SIZE MUST BE LESS THAN 16 CHARACTERS
UR15069.0030	New Message: “LSP AUTHORIZATION COMBINATION INVALID AS ENTERED”
UR15069.0050	“AUTHORIZATION IS REQUIRED FROM THE OWNER OF THE FACILITY”
UR15069.0080	“AUTHORIZATION DOES NOT MATCH FACILITY OWNERSHIP”
UR15069.0100	Deleted 09/05/01

2.4 Service Order Exhibits

	Yes	No
Tested:	N/A	

Service Order Exhibit
N/A



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ENC15069 DOC
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2.5 Impact on LSR Data Fields

2.5.1 LSR Data Fields – To be Added

Field Name	LSR Section	Length (characters)	A AN N	R C O	Acceptable Entries
N/A					

2.5.2 LSR Data Fields – To be Revised

	Field Name	LSR Section	Length (characters)	A AN N	R C O	Acceptable Entries
Current	N/A					
Revised						
Current						
Revised						

2.5.3 LSR Data Fields – To be Deleted

Field Name	LSR Section
N/A	



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2.6 Impact on FID

4.6.1 FID – Additions or Changes to be Implemented with this Feature

FID	Description	Service Order Section
N/A		

2.6.2 FID – To be Deleted From This Feature

FID	Description	Service Order Section
N/A		

2.7 Impact on USOCs – Additions or Changes to be Implemented with this Feature

USOC	Description	Valid States	Applicable FIDs
N/A			

To be completed by BCCM only:

(1) CHANGE REQUEST LOG #		1633
(2) STATUS	R	
(3) STATUS		
DATE SENT (2a)	12/18/03	

To be completed by CCM or BellSouth.

(3) REQUEST TYPE	<input type="checkbox"/> TYPE 2 (REGULATORY)	<input type="checkbox"/> TYPE 3 (INDUSTRY)	<input type="checkbox"/> TYPE 4 (BST)	<input checked="" type="checkbox"/> TYPE 5 (CLEC)
	<input type="checkbox"/> TYPE 6 (DEFECT) NOTE COMPLETE SECTION 2	<input type="checkbox"/> EXPEDITED FEATURE	<input type="checkbox"/> FLOW-THRU	

SECTION 1

(4) COMPANY NAME	AT&T
(5) OCN	7421
(6) CCM NAME	Jordana Jureidini
(7) TELEPHONE NUMBER	409-833-5328
(8) CCM EMAIL ADDRESS	jureidini@att.com
(9) CCM FAX NUMBER	281-664-3799
(10) ALTERNATE CCM NAME	Nicole Kisting – Birch Telecom
(11) ALTERNATE PHONE NUMBER	(816) 300-1575
(12) ORIGINATOR'S NAME	Jordana Jureidini
(13) ORIGINATOR'S PHONE NUMBER	409-833-5328
(14) TITLE OF CHANGE REQUEST	Revised process for viewing Resale/UNE-P CSRs (Customer Service Records) and DL CSRs for facility-based providers

Attachment A-4A

Jointly Developed by the Change Control Sub-team comprised
of BellSouth and CLEC Representatives

(15) CATEGORY	<input type="checkbox"/> ADD NEW FUNCTIONLITY	<input checked="" type="checkbox"/> CHANGE EXISTING
(16) DESIRED DUE DATE	ASAP	

(17) ORIGINATING CCM ASSESSMENT OF IMPACT	<input checked="" type="checkbox"/> HIGH	<input type="checkbox"/> MEDIUM	<input type="checkbox"/> LOW
(18) ORIGINATING CCM ASSESSMENT OF PRIORITY	<input type="checkbox"/> URGENT	<input checked="" type="checkbox"/> HIGH	<input type="checkbox"/> MEDIUM <input type="checkbox"/> LOW

(19) INTERFACES IMPACTED				
PRE-ORDERING	<input checked="" type="checkbox"/> LENS	<input checked="" type="checkbox"/> TAG	<input checked="" type="checkbox"/> EDI Pre-Order	
ORDERING	<input type="checkbox"/> EDI	<input type="checkbox"/> LENS	<input type="checkbox"/> TAG	<input type="checkbox"/> LNP
MAINTENANCE	<input type="checkbox"/> TAFI	<input type="checkbox"/> EC-TA Local		
MANUAL	<input type="checkbox"/> Manual			

(20) TYPE OF CHANGE (Check one or more, as applicable)				
<input checked="" type="checkbox"/> Software	<input type="checkbox"/> Product & Services	<input type="checkbox"/> Documentation	<input type="checkbox"/> Hardware	<input type="checkbox"/> New or Revised Edits
<input type="checkbox"/> Regulatory	<input type="checkbox"/> Industry Standards	<input checked="" type="checkbox"/> Process	<input type="checkbox"/> Other	<input type="checkbox"/> Defect
<input type="checkbox"/> Expedited Feature	<input type="checkbox"/> Flow Through			

Attachment A-4A

Jointly Developed by the Change Control Sub-team comprised
of BellSouth and CLEC Representatives

This section to be completed by BellSouth only

(21) DESCRIPTION OF REQUESTED CHANGE (including purpose and benefit received from this change. Include attachments if available)	<p>The implementation of CR0246/CR0184 gave CLECs the ability to view CSRs for Resale/UNE-P end users, when the other CLEC grants that authorization. Under the existing process, each CLEC must manually update the BellSouth tables for each of its OCNs. This process is unnecessary.</p> <p>When pulling CSRs in LENS or unparsed CSRs via TAG, BellSouth requires the CLEC to certify that it has proper authorization to view the CSR information for each end user prior to providing the Retail CSR. If the CLEC has obtained proper authorization from the end-user, BellSouth should also provide CSR information for Resale/UNE-P CSRs and Directory Listing (DL) CSRs for Facility Based Providers.</p> <p>By providing these Resale/UNE-P/Facility based CSRs to all CLECs, BellSouth will increase the probability of CLECs submitting error-free orders.</p> <p>03/15/04 (REVISED) AT&T has agreed to remove the DL portion of this request.</p> <p>05/19/04 SEE REVISED DESCRIPTION IN SECTION 31)</p>
(22) REQUEST TYPE(S) IMPACTED:	Pre-Order
(23) ACTION TYPE(S) IMPACTED:	
(24) PROVIDE EXAMPLE OF REQUESTED CHANGE	BellSouth to provide unfettered access to Resale/UNE-P CSRs and DL CSRs (for facility based providers) to all CLECs that have obtained proper end user authorization
(25) Identify the LSOG versions that are affected by this change.	ELMS6
(26) Does this request require clarification?	<input type="checkbox"/> YES <input type="checkbox"/> NO
(27) Clarification Request Sent	
(28) Clarification Response Due	
(29) Change Request Review Date	
(30) Target Implementation Date	
(31) Change Review Meeting Results	<p>12/19/03 Being reviewed by BellSouth</p> <p>01/06/04 BellSouth is able to support this request, therefore, it is placed into AH status</p>

Attachment A-4A

02/13/04 After further investigation of Change Request 1633, it has been determined that clarification is needed. We would like AT&T to clarify the intent of this change request. These are the items in question

- 1 Please clarify the statement in section 24 "The "unfettered access" for "end users" who have obtained proper authorization",
 - a Who are the "end users" referred to in this statement, the CLECS or the CLEC's customers?
 - b What is meant by "Unfettered Access"
- 2 Is the intent of this change request, for Any CLEC, to view Any CLECs CSR"s, WITHOUT having to Grant permission?
- 3 Is the intent of this change request to only "Add" the functionality for all 3 systems (TAG, LENS and EDI), of granting & revoking access to "Directory Listing CSR's of facility based providers", and to "ADD" the functionality to TAG/XML and EDI, for granting and revoking permission, for other CLECs to view each others Resale and UNE-P CSR's?

02/16/04 Received reply from AT&T and Birch Telecom

- 1 Please clarify the statement in section 24 "The "unfettered access" for "end users" who have obtained proper authorization",

Question

- a Who are the "end users" referred to in this statement, the CLECS or the CLEC's customers?

Answer

- a) End users are CLEC/BellSouth customers

Question

- b What is meant by "Unfettered Access"

Answer

- b) We wanted unlimited access to all CLEC CSRs, regardless of the type of CLEC - UNE-P, Resale, or Facility -based

"Proper authorization" refers to end user authorization that complies with applicable state and federal law

Question

- 2 Is the intent of this change request, for Any CLEC, to view Any CLECs CSR"s, WITHOUT having to Grant permission?

Answer

- 2 Yes The current process for granting and obtaining authorizations is cumbersome

Question

- 3 Is the intent of this change request to only "Add" the functionality for all 3 systems (TAG, LENS and EDI), of granting & revoking access to "Directory Listing CSR's of facility based

Attachment A-4A

providers", and to "ADD" the functionality to TAG/XML and EDI, for granting and revoking permission, for other CLECs to view each others Resale and UNE-P CSRs?

Answer

3 The intent of this CR is to provide all CLECs with access to all CLEC CRs maintained in BellSouth systems. This functionality should be available through EDI, XML, and LENS

03/05/04, BellSouth will be able to support the portion of this request (CR1633) that will add the functionality of viewing Directory Listing CSR's to the EDI, TAG and LENS systems

However, BellSouth is unable, due to CPNI (Customer Proprietary Network Information) restrictions, the portion of this change request that requests, "Unfettered Access" to ALL CLEC accounts

03/15/04 Functionality of viewing DL (Directory Listing) CSRs already exist. AT&T has confirmed that they can grant other CLECs the ability to view Directory Listings and have tested this with another CLEC. AT&T has agreed to remove the DL portion of this request.

AT&T and Birch have also agreed to provide examples of where other RBOCs/ILECs are currently providing this capability and how they have managed to get around CPNI issues and allow BellSouth to investigate. CR moved to PC awaiting communication from CLEC.

05/18/04 CLEC sent email with a **REVISED** description to the request. CMT called CLEC for clarification of the description since no reference to the above requested examples were noted and also to be sure description is the same as the original request without the DL reference.

05/19/04 CMT spoke to CLEC regarding the following **REVISED** description to the request. BellSouth currently allows CLECs to view each other's CSRs through the BellSouth systems (LENS and XML, EDI will be available in 2005). While all CLECs (UNE-P, Resale, and Facility-based) can share their CSRs, the current process is tedious, requiring a multitude of CLEC to CLEC negotiations, followed by each CLEC updating the BellSouth tables via LENS.

AT&T and Birch believe that with appropriate end-user authorization, CLECs should have unfettered access to the customer's service records, and no other approval is necessary. However, until this issue is resolved, AT&T and Birch request that the current process be improved as described below. BellSouth should allow each CLEC to decide whether or not they are willing to share their CSRs with other CLECs. All CLECs agreeing to share CSRs will be given access to the CSRs for all the other CLECs willing to share CSRs. CLECs who do not wish to participate in sharing CSRs will not be granted access to any other CLEC CSRs.

Attachment A-4A

For example- CLECs A, B, C, and D are willing to share CSRs with other CLECs, CLECs X, Y, and Z are not willing to share CSRs with other CLECs. CLECs A, B, C, and D would all be granted access to each other's CSRs for UNE-P, Resale, and/or facilities-based customers through the BellSouth systems, CLECs X, Y, and Z would only be able to see CSRs for their own UNE-P, Resale and/or Facility-based customers

Rather than each CLEC having to administer their own tables, this would allow BellSouth to administer one "master" table

CMT agreed to update the request and resend to SME for review
Response will be provided thru CCP (AT&T agreed to update the "Title" of request to delete reference to DL)

CR removed from "PC" and placed in "N" status

05/24/04 Conference call held between CLEC and BST to clarify intent of the request. It was agreed that a final response would be provided by 05/28/04

05/25/04 BellSouth is unable to support this request as written due to Cost and Industry Standards

The following criteria was taken into consideration when making this decision

- Industry standard process flows defined in the ATIS 070 practice depicts the relationship is between old LSP and new LSP. BellSouth already provides beyond the industry expectations by allowing CLEC's to use our interfaces to obtain other CLEC CSR information when permission has been authenticated
- Cost-It is too costly for BellSouth to establish, monitor, maintain or sever relationships between CLEC trading partners
- The CR as written in it's current state, would in fact penalize the CLEC community by restricting CSR viewing options that are not BellSouth's options to restrict

BellSouth can support the following alternative solution

- BellSouth can provide "Grant All" capability to the existing functionality that will allow CLEC's the option to update their own profiles to allow other CLEC's with the same permission code set to view their CSR when BellSouth is the ILEC that maintains the CSR and authentication is confirmed
- The CLEC will continue to be the "Administrator of this process and will be allowed to **grant and revoke** permissions at will

If the CLEC elects to accept this alternative, the change request will be accepted and placed in AH status

(32) CANCELED CHANGE
REQUEST

☐ DUPLICATE

☐ TRAINING

☐ CLARIFICATION NOT RECEIVED

Attachment A-4A

(33) CANCELTATION ACKNOWLEDGMENT	<input type="checkbox"/> CLEC	<input type="checkbox"/> BST	DATE:
----------------------------------	-------------------------------	------------------------------	-------

(34) APPEAL	<input type="checkbox"/> YES	<input type="checkbox"/> NO
-------------	------------------------------	-----------------------------

(35) APPEAL CONSIDERATIONS	
----------------------------	--

SECTION 2

This section to be completed by CLEC/BellSouth- External Explanation of Type 6 Defect Change Request

(36) PON #	
(37) ERROR MESSAGE	
(38) RELEASE OR API VERSION (If applicable)	
(39) DESCRIPTION OF DEFECT SCENARIO	

SECTION 3

This section to be completed by BellSouth – Internal Validation of Defect Change Request

(40) DEFECT VALIDATION RESULTS	
(41) CLARIFICATION NEEDED	<input type="checkbox"/> YES <input type="checkbox"/> NO
(42) VALIDATED DEFECT IMPACT LEVEL	<input type="checkbox"/> HIGH <input type="checkbox"/> MEDIUM <input type="checkbox"/> LOW
(43) VALIDATION TYPE	<input type="checkbox"/> DEFECT <input type="checkbox"/> FEATURE <input type="checkbox"/> TRAINING ISSUE <input type="checkbox"/> DUPLICATE
(44) DEFECT IMPACTS OTHER CLECS?	<input type="checkbox"/> YES <input type="checkbox"/> NO
(45) INTERFACES IMPACTED BY DEFECT	<input type="checkbox"/> EDI <input type="checkbox"/> TAG <input type="checkbox"/> LNP <input type="checkbox"/> LENS <input type="checkbox"/> TCIF 7 <input type="checkbox"/> TCIF 9
(46) TARGET IMPLEMENTATION DATE	

UNITED STATES GOVERNMENT
memorandum

RECEIVED

FEB 10 1999

DATE: February 10, 1999

REPLY TO

ATTN OF: Jake E. Jennings *JEJ*
Policy & Program Planning Division
Common Carrier Bureau
1919 M Street., NW
Washington, DC 20554

FILE COPY DUPLICATE

SUBJECT: CC Docket No. 97-121, 97-137, 97-208, and 98-121

TO: Ms. Magalie Roman Salas
445 12 St., SW, Room TWB-204
Washington, DC 20554

Please place the attached letter into the record of CC Docket 97-121, 97-137, 97-208, 97-231, and 98-121. If you require further information, please feel free to contact me at 202 418-1580. Thank you for your assistance.



Federal Communications Commission
Washington, D.C. 20554

February 10, 1999

Mr. Sid Boren
Executive Staff Officer
BellSouth Corporation
1155 Peachtree St., N.E., Room 2004
Atlanta, GA 30309

Dear Mr. Boren:

On December 15, 1998, members of the Common Carrier Bureau Staff ("Bureau Staff") met with representatives of BellSouth to discuss interpretations of the Commission's October 13, 1998, BellSouth Louisiana II Order as it might be applied in other states in which section 271 applications might be filed.¹ A summary of the discussion is described below. The Bureau Staff indicated that additional information from BellSouth and interested parties would be useful in order for the Bureau Staff to engage in further discussion. The Bureau Staff also indicated that its views were based on information developed since the issuance of the BellSouth Louisiana II order. The Bureau Staff stated that its views on any of these issues were in no way binding on the Commission, and that no conclusive determination could be made outside the context of an actual Section 271 application and record.

1. Flow-Through.

Issue. Whether BellSouth can exclude complex orders from its flow-through calculations and what level of disaggregation of flow-through is necessary to demonstrate nondiscriminatory access.

Bureau Staff Response The Bureau Staff stated its view that, in principle, complex orders that are manually processed for BellSouth's retail customers could be excluded from flow-through calculations. The Bureau Staff also stated its view that, to the extent BellSouth excludes complex orders from its flow-through calculations, the following information should accompany a future Section 271 application: (1) a clear definition of complex orders for CLECs and BellSouth; (2) a demonstration of how BellSouth handles complex orders for its retail customers and CLECs; (3) evidence that complex orders are processed in a nondiscriminatory manner (i.e., performance results and analysis).

¹ Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (BellSouth Louisiana II 271 Order).

Mr. Boren

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The Bureau Staff also stated its view that BellSouth could exclude from its flow-through calculation orders submitted by CLECs that contained CLEC-caused errors. The Bureau Staff stated its view that the flow-through calculation could be adjusted to exclude CLEC errors, if, in a future Section 271 application, BellSouth (1) defines more clearly what constitutes a CLEC error; and (2) verifies the cause of the errors as being CLEC errors (e.g., through an independent audit).

In response to questions about the appropriate level of disaggregation the Bureau Staff indicated its view that the proposed levels of disaggregation listed in the *OSS Model Rules NPRM*² were appropriate.

2. TAFI Integration

Issue. (1) Whether BellSouth must provide a machine-to-machine repair and maintenance interface in order to meet the nondiscrimination requirement. (2) Absent a machine-to-machine repair and maintenance interface, what evidence is necessary to demonstrate nondiscriminatory access.

Bureau Staff Response The Bureau Staff stated its view that it did not believe that machine-to-machine repair and maintenance interface is *per se* required. The Bureau Staff noted that the Louisiana II Order found that a lack of machine-to-machine interface for repair and maintenance was not *per se* discriminatory. The Bureau Staff stated its view that, absent a machine-to-machine repair and maintenance interface, BellSouth must demonstrate that the interfaces offered to CLECs provide nondiscriminatory access. The Bureau Staff also stated that additional information was needed to assess the competitive impact that results from a lack of a machine-to-machine interface for repair and maintenance. In order to obtain such information, the Bureau Staff indicated that it would schedule additional meetings with interested parties.

The Bureau Staff stated its view that the following information would assist in evaluating in a future application whether BellSouth's repair and maintenance interface provide nondiscriminatory access: (1) a detailed description of the systems and functionality BellSouth utilizes itself for both designed and nondesigned services; (2) a detailed description of the systems and functionality BellSouth offers to competing carriers; (3) a discussion of what interface functionality competing carriers have requested through the change control process and the status of such request, if any; and (4) performance results for resold services and UNEs by interface type.

² See *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, Notice of Proposed Rulemaking, 13 FCC Rcd 12817 (1998).

Mr. Boren

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3. Retail Analogues/Performance Standards/Statistical Measurements.

Issue. Methods of evaluating whether BellSouth's OSS performance meets the nondiscrimination requirement.

Bureau Staff Response The Bureau Staff asked BellSouth to propose a framework for evaluating whether it is providing nondiscriminatory access to OSS functions and suggested that BellSouth include the following criteria:

- Relevant performance measurements;
- Identification of retail analogues, including level of disaggregation;
- Identification of a benchmark or performance standard where no retail analogue exists (e.g., based on state approved intervals, engineering studies, or other standards);
- A statistical methodology which is used to compare actual performance results to retail analogues or benchmarks;
- A threshold for determining whether differences in performance are competitively significant and whether analysis of the underlying cause for the difference is needed;
- An open process for analyzing the underlying cause for differences of performance;
- Meaningful penalty amounts to prevent "backsliding."

The Bureau Staff also indicated that it would seek industry comment of any framework for evaluating OSS performance proposed by BellSouth.

4. Complex Ordering/Partial Migration Orders.

Issue. Whether partial migration and directory listing need to be ordered electronically.

Bureau Staff Response The Bureau Staff stated its view that there is no retail analog for partial migration orders, and that electronic ordering capability is not required at this time. The Bureau Staff stated its view that BellSouth must demonstrate that the ordering process for complex/partial migration orders meets the nondiscrimination requirement (e.g., provides an efficient competitor a meaningful opportunity to compete). The Bureau Staff also stated its

Mr. Boren

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view that BellSouth should continue upgrading its OSS ordering interface through the change control process.

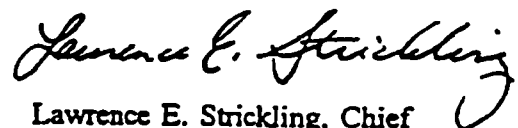
5. Third-Party Testing -- Demonstration of Operational Readiness.

Issue. In cases where there is little or no commercial usage of an interface, whether BellSouth must engage in third-party testing at the level implemented by Bell Atlantic in New York .

Bureau Staff Response The Bureau Staff noted that, in its view, internal testing cannot overcome evidence from commercial usage demonstrating inferior service to CLECs. The Bureau Staff stated its view that, where there is no commercial usage or inconclusive commercial usage exists, some form of testing is necessary to demonstrate that the BOC's OSS is operationally ready. The Bureau Staff indicated its view that, while it could not conclude, in the absence of a factual record, whether some forms of internal testing or carrier to carrier testing could demonstrate operational readiness, a third party test would serve as a reasonable "safe harbor." The Bureau Staff noted as two examples of such tests underway in New York and Texas. The Bureau Staff stressed the importance, in its view, of a test plan that included input from interested parties and includes meaningful independent review (e.g., State Commission oversight).

For information purposes, a copy of this letter will be placed in all open section 271 dockets.

Sincerely,



Lawrence E. Strickling, Chief
Common Carrier Bureau
Federal Communications Commission

cc: Ms. Magalie Roman Salas
Secretary
Federal Communications Commission

**FT MATRIX
PRODUCT/SERVICES
April 2004**

Product	PRODUCT TYPE	REQTYPE	ACT TYPE	F/T ²	COMPLEX SERVICE	COMPLEX ORDER	PLANNED FALLOUT FOR MANUAL HANDLING ¹	EDI	TAG	LENS	COMMENTS
2 wire analog DID trunk port	U	F	N	No	UNE	Yes	NA	N	N	N	
2 wire analog port	U	F	N	No	UNE	No	Yes	Y	Y	Y	
2 wire ISDN digital line	U	A	N.T	No	UNE	Yes	NA	N	N	N	
2 wire ISDN digital loop	U	A	N.C.D	Yes	UNE	Yes	No	Y	Y	N	
2 wire ISDN digital loop - LNP	U	B	V.P.Q	Yes	UNE	Yes	No	Y	Y	N	
3 Way Calling	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
3rd Party Call Block	R.B	E.M	N.C.V.W.D.P.Q.T	Yes	No	No	No	Y	Y	Y	
4 wire analog voice grade loop	U	A	T	No	UNE	Yes	Yes	Y	Y	N	
4 wire analog voice grade loop	U	A	N	Yes	UNE	Yes	No	Y	Y	N	
4 wire DSI & PRI digital loop	U	A	N.T	No	UNE	Yes	NA	N	N	N	
4 wire DSO & PRI digital loop	U	A	N.T	No	UNE	Yes	NA	N	N	N	
4 wire ISDN DSI digital trunk ports	U	A	N.T	No	UNE	Yes	NA	N	N	N	
4-WIRE DSI LOOP WITH CHANNELIZATION	C	M	N.C.D.V	No	Yes	Yes	NA	N	N	N	
WITH PORT DSI											
4-WIRE DSI LOOP WITH CHANNELIZATION	C	M	N.C.D.V	No	Yes	Yes	NA	N	N	N	
WITH PORT TRUNK SERVICE											
900 Call Block	R.B	E.M	N.C.V.W.D.P.Q.T	Yes	No	No	No	Y	Y	Y	
Accupulse	C	E	N.C.T.V.W	No	Yes	Yes	NA	N	N	N	NOTE THIS PRODUCT CAN BE ORDERED FOR RES/BUS AND CENTREX
ADSL	R.B.C	E	V.W.D	No	C/S	C/S	No	Y	Y	Y	
ADSL (KY & LA)		M		Yes	No	No	No	Y	Y	Y	
Analog Data/Private Line	C	K	N.C.T.V.W.D	Yes	Yes	Yes	NA	N	N	N	
Arca Plus	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	NA	Y	Y	Y	
ATM (ASYNCHRONOUS TRANSFER MODE)	C	E	N.C.V.W.D	No	Yes	Yes	NA	N	N	N	
Basic Rate ISDN *Unbundled	U	A	T	No	Yes	Yes	Yes	Y	Y	N	
Basic Rate ISDN *Unbundled	U	A	N.V.D	Yes	UNE	Yes	No	Y	Y	Y	
Basic Rate ISDN *Unbundled	U	A	C.T	No	UNE	Yes	Yes	Y	Y	Y	
Basic Rate ISDN 2 Wire UNE P	C	M	N.C.D.V	No	Yes	Yes	NA	N	N	N	Manual
Basic Rate ISDN 2 Wire	C	E	N.C.D.T.V.P.Q	No	Yes	Yes	Yes	Y	Y	Y	
BELLSOUTH CHANNELIZED TRUNKS	C	E	N.C.D.T.V.W.P.Q	No	Yes	Yes	NA	N	N	N	
Call Block	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
Call Forwarding	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
Call Return	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
Call Selector	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
Call Tracing	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
Call Waiting	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
Call Waiting Deluxe	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
Caller ID	R.B	E.M	N.C.V.W.P.Q.T	Yes	No	No	No	Y	Y	Y	
BELLSOUTH CENTREX*	C	P	N.C.D.W.T.S.B.L.V.P	No	Yes	Yes	NA	N	N	N	
UNE P CENTREX	C	M	N.C.D.V	No	Yes	Yes	NA	N	N	N	
Collect Call Block	R.B	E.M	N.C.V.W.D.P.Q.T	Yes	No	No	No	Y	Y	Y	
DID	C	C	V.W	No	Yes	Yes	Yes	Y	Y	Y	
DID Resale	C	N	N.C.D.V.W.T.	No	Yes	Yes	Yes	Y	Y	N	

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2-WIRE DIRECT INWARD DIAL (DID) TRUNK PORT AND VOICE GRADE LOOP COMBINATION	C	N	N.C.D.V	No	Yes	Yes	NA	N	N	N
Digital Data Transport	U	E	N.C.T.V.W	No	UNE	Yes	NA	N	N	N
DIGITAL DIRECT INTEGRATION										
TERMINATION SERVICES (DDITS) DSI										
DIGITAL DIRECT INTEGRATION	C	M	N.C.D.V	No	Yes	Yes	NA	N	N	N
TERMINATION SERVICES (DDITS) TRUNK										
SERVICE	C	M	N.C.D.V	No	Yes	Yes	NA	N	N	N
Directory Listing Indications	B,U	B,C,E,F,J,M,N	N.C.T.R.V.W.P.Q	Yes	No	No	No	Y	Y	Y
Directory Listings (simple)	R,B,U	B,C,E,F,J,M,N	N.C.R.V.W.P.Q	Yes	No	No	No	Y	Y	Y
Directory Listings (simple)	R,B,U	B,C,E,F,J,M,N	T	Yes	No	No	No	Y	Y	Y
Directory Listings Captions	R,B,U	B,C,E,F,J,M,N	N.C.T.R.V.W.P.Q	Yes	No	Yes	No	Y	Y	Y
DIFFERENT PREMISE ADDRESS (DPA)	C	E	N.C.D.V.W,T	No	Yes	Yes	NA	N	N	N
DS1 Loop	U	A	N.D.V	Yes	UNE	Yes	No	Y	Y	Y
DS3	U	A	N.C.V	No	UNE	Yes	NA	N	N	N
DSO Loop	U	A	N.D.V	Yes	UNE	Yes	No	Y	Y	Y
DSO Loop	U	A	C.T	No	No	No	Yes	Y	Y	Y
Enhanced Caller ID	R,B	E	C.D.N.V.W.P.Q,T	Yes	No	No	No	Y	Y	Y
Enhanced Extended Links (EELS)	U	A	C.D.N.T.V	No	No	No	Yes	Y	Y	Y
ESSX	C	P	C.D.T.V.S.B.W.L.P.Q	No	Yes	Yes	NA	N	N	N
			C.D.N.V.W,T							
Flat Rate/Business	B	F, M	Y.B.L.S.D.T.P.Q	Yes	No	No	No	Y	Y	Y
			C.D.N.V.W,T							
Flat Rate/Residence	R	L, M	Y.B.L.S.D.T.P.Q	Yes	No	No	No	Y	Y	Y
FLEXSERV	C	E	N.C.D.T.V.W.P.Q	No	Yes	Yes	NA	N	N	N
Frame Relay	C	E	N.C.D.V.W	No	Yes	Yes	NA	N	N	N
FX/FCCO	C	E	N.C.D.T.V.W.P.Q	No	Yes	Yes	NA	N	N	N
PRODUCT WILL NOT BE AVAILABLE UNTIL 08--01-02	C	M	N.C.V.D.T.S.B.L.W.Y.P.Q	No	Yes	Yes	NA	N	N	N
Ga Community Calling	R,B	M	C.D.N.V.W.P.Q	No	No	No	NA	N	N	N
Ga Community Calling	R,B	E	T	No	No	No	Yes	Y	Y	N
HDSL	U	A	T	No	UNE	No	Yes	Y	Y	N
HDSL	U	A	N.C.D.V	Yes	UNE	No	No	Y	Y	Y
Hunting MLH	R,B	E, M	C.D.N.T.V.W	No	C/S*	C/S	Yes	Y	Y	N
Hunting Series Completion	R,B	E, M	C.D.N.V.W	Yes	C/S	C/S	Yes	Y	Y	Y
Hunting Series Completion	R,B	E, M	T	Yes	No	No	No	Y	Y	Y
INP to LNP Conversion	U	C	C	No	UNE	Yes	Yes	Y	Y	N
LightGate	C	E	N.C.D.T.V.W.P.Q	No	Yes	Yes	NA	N	N	N
Line Sharing	U	A	N.C.D.V.P.Q	Yes	UNE	No	No	Y	Y	Y
Line Splitting	U	A	N.C.D	Yes	UNE	No	No	Y	Y	Y
LNP With Complex Listing	U	C	P.V.Q	Yes	UNE	Yes	N	Y	Y	N
LNP with Complex Services	U	C	P.V.Q	No	UNE	Yes	Yes	Y	Y	N
LNP with Partial Migration	U	C	P.V.Q	No	UNE	Yes	Yes	Y	Y	N
LNP	U	B,C	P.V.Q	Yes	UNE	Yes	No	Y	Y	Y
LNP (Consecutive Telephone Numbers)	U	C	C.V.P.Q	No	UNE	No	Yes	Y	Y	N
Local Number Portability (INP to LNP)	U	C	C	No	UNE	No	Yes	Y	Y	N
INP	U	B,C	D	No	UNE	No	Yes	Y	Y	N

**FT MATRIX
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Loop+LNP	U	B	V,P,Q	Yes	UNE	No	No	Y	Y	Y
Measured Rate/Bus	R,B	E,M	C,D,N,V,W,P,Q,T Y,B,L,S,D	Yes	No	No	No	Y	Y	Y
Measured Rate/Res	R,B	E,M	C,D,N,V,W,P,Q,T Y,B,L,S,D	Yes	No	No	No	Y	Y	Y
Megalink POINT TO POINT	C	E	N,V,W,T,D,C,P,Q	No	Yes	Yes	NA	N	N	N
Megalink CHANNELIZED	C	E	N,V,W,T,D,C,P,Q	No	Yes	Yes	NA	N	N	N
Memory Call	R,B	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	NA	Y	Y	Y
Memory Call Ans Svc	R,B	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	Y
Multiserv	C	P	N,C,D,T,V,S,B,W,L,P,Q	No	Yes	Yes	NA	N	N	N
Naive Mode LAN Interconnection (NMLI)	C	E	N,C,D,V,W	No	Yes	Yes	NA	N	N	N
On-Prem Stations	C	E	N,C,D,V,W,T	No	Yes	Yes	No	N	N	N
On/Off Premise Extension UNE-P	C	M	N,C,D,V	No	Yes	Yes	No	N	N	N
Optional Calling Plan	R,B	E,M	N,V,P,Q,W	Yes	No	No	No	Y	Y	Y
Packages/Complete Choice and Area Plus	R,B	E,M	N,C,V,W,P,Q	Yes	No	No	No	Y	Y	Y
Package/Complete Choice and Area Plus	R,B	E,M	T	Yes	No	No	No	Y	Y	Y
Pathlink/ Primary Rate ISDN	C	E	N,C,D,T,V,W,P,Q	No	Yes	Yes	NA	N	N	N
4-WIRE ISDN PRI UNE COMBO	C	M	N,C,D,V	No	Yes	Yes	NA	N	N	N
Pay Phone Provider	B	E,M	C,D,T,N,V,W,P,Q	Yes	No	No	No	Y	Y	Y
PBX Standalone Port	C	N	N,C,D	No	Yes	Yes	No	N	N	N
PBX UNE-P	C	N	N,C,D,V	No	Yes	Yes	No	N	N	N
PBX Trunks Resale	C	N	N,C,D,V,W,T,P,Q	No	Yes	Yes	Yes	Y	Y	Y
PIC/LPIC Change	R,B,C	E,M	C,V,P,Q,T	Yes	No	No	No	Y	Y	Y
PIC/LPIC Freeze	R,B,C	E,M	N,C,V,P,Q,T	Yes	No	No	No	Y	Y	Y
PORT/LOOP COMBO 2-WIRE PBX	C	M	N,C,D,V	No	No	No	Yes	Y	Y	N
Port/Loop Simple	U	M	N,C,D,T,V,S,B,L,P,Q,Y	Yes	No	No	No	Y	Y	Y
Preferred Call Forward	R,B,U	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	Y
RCF Basic	R,B	E,M	N,D,W,V,P,Q,T	No	No	No	Yes	Y	Y	N
Remote Access to CF	R,B	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	Y
Repeat Dialing	R,B	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	Y
Ringmaster	R,B	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	Y
Smartpath	R,B	E	C,D,T,N,V,W	No	Yes	Yes	NA	N	N	N
SmartRING	C	E	N,D,C,V,W	No	Yes	Yes	NA	N	N	N
Speed Calling	R,B	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	Y
Synchronet	C	K	N,D,C,V,W	No	Yes	Yes	Yes	Y	Y	N
Three Way Call Block	R,B	E,M	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	N
Tie Lines	C	E	N,C,D,V,W,T	No	Yes	Yes	No	N	N	N
TOLL FREE DIALING (TFD)	C	E	N,C,D,V,W	No	Yes	Yes	NA	N	N	N
Touchtone	R,B	E	C,D,N,V,W,P,Q,T	Yes	No	No	No	Y	Y	Y
Unbundled Loop-Analog 2W, SL1, SL2	U	A,B	D,N,V	Yes	UNE	No	No	Y	Y	Y
Unbundled Loop-Analog 2W SL1,SL2	U	A,B	C**	Yes	UNE	No	Yes	Y	Y	Y
Unbundled Universal Digital Channel (UDC) Loop	U	A	N,D	Yes	UNE	No	No	Y	Y	Y
WATS*	C	E	W,D,N,C,V	No	Yes	Yes	NA	N	N	N
Wireless Local Number Portability (WLNLP)	U	C	V	No	UNE	No	Yes	Y	Y	Y
XDSL	U	A,B	N,C,V,D	Yes	UNE	No	No	Y	Y	Y
XDSL	U	A,B	T	No	No	No	Yes	Y	Y	N

Products.

FT MATRIX
PRODUCT/SERVICES
April 2004

U=UNE
 C=Complex
 R=Residence

REQ TYPE:

A=Loop Service
 B=Loop with LNP/INP
 C=LNP/INP & WLNP
 E=Resale
 F=Port Service
 J=Directory Listing
 K=Synchronet/Private Line
 N=DID/DOD/PBX Service
 P=CENTREX Resale

ACT TYPE:

D=Disconnection
 T=Outside move of end user or Inside Move
 R=Record activity is for ordering administrative changes
 V=Conversion of service to new LSP as specified
 W=Conversion of service to new LSP "as is".
 S=Suspend
 B=Restore
 Y=Deny
 L=Seasonal Suspend
 P=Partial Migration (Initial)
 Q=Partial Migration (Subsequent)

Note 1:

Planned Falout for Manual Handling denotes those services that are electronically submitted and are not intended to flow through due to the complexity of the service

Note2

For all services that indicate 'No' for flow-through, the following reasons, in addition to complex services or complex order, also prompt manual handling:

Expedites from CLEC's
 Special Pricing Plans (If Special Pricing Plan is not addressed when issuing LSR)
 Partial Migrations (although conversions -as-is flow through for issue 9 unless migrating the main TN and a new TN must be assigned)
 Class of Service invalid in certain states with some TOS, (Examples Government, Cannot change when changing main TN on C activity)
 Pending Order Review (Examples Any pending service order (PSO) not related to current PON, pending service order with multiple service orders related to current PON and SUP received)
 More than 25 business lines and more than 15 loops
 CSR inaccuracies such as invalid or missing CSR data in CRIS
 Transfer of Call Option for end user when new TN not yet posted to CRIS

Note 3

Services with C/S in the Complex Service and/or the Complex Order columns can be either complex or simple

Note 4.

The following list of items will not flow through
 LSRs with Project or RPON fields populated
 **SLJ REQ TYP A, ACT C, LNA N, C, or D
 **SL2 REQ TYP A, ACT C, LNA C

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REQTYP B, C, ACT P when migrating main telephone number
REQTYP B, C, ACT V with Complex
REQTYP E, M, N and P, ACT = V, LNA = V (LNP to Resale/UNE Switched Combinations)

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 DIRECT TESTIMONY OF CARLOS MORILLO
3 BEFORE THE TENNESSEE REGULATORY AUTHORITY
4 DOCKET NO. 04-00046
5 JUNE 25, 2004
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH"), AND YOUR
9 BUSINESS ADDRESS.

10

11 A. My name is Carlos Morillo. I am employed by BellSouth as Director – Policy
12 Implementation for the nine-state BellSouth region. My business address is
13 675 West Peachtree Street, Atlanta, Georgia 30375.

14

15 Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR BACKGROUND
16 AND EXPERIENCE.

17

18 A. I graduated from West Virginia University in 1984 with Bachelor of Science
19 degrees in Economics & Geology. In 1986, I received a Masters in Business
20 Administration with concentrations in Economics and Finance from West
21 Virginia University. After graduation, I began employment with Andersen
22 Consulting supporting various projects for market research, insurance, and
23 hospital holding companies. In 1990, I joined MCI, Inc. as a Business Analyst.
24 My responsibilities included supporting the implementation of processes and
25 systems for various business products and services. In addition to my Business

1 Analyst duties, I worked as a Financial Analyst evaluating the financial
2 performance of various price adjustments as well as promotion deployment,
3 including the state and Federal tariff filings. I was also a Product Development
4 Project Manager supporting the deployment of business services. In 1994, I
5 joined BellSouth International as a Senior Manager of IT Planning, and later
6 became Director of Business Development. In 1999, I became Director of
7 eCommerce in BellSouth's domestic operations and in 2002, Director of
8 International Audit. I assumed my current position as Director - Policy
9 Implementation and Regulatory Compliance in May of 2004.

10
11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12
13 A. The purpose of my testimony is to provide BellSouth's position on the
14 numerous unresolved policy issues in this proceeding pertaining to
15 Attachments 6, 7 and 11 of the Interconnection Agreement. Specifically, my
16 testimony addresses Issues 6-1, 6-2, 6-3(b), 6-5, 6-6, 6-7, 6-9, 6-10(a-b), 7-1,
17 7-3, 7-4(a-b), 7-5, 7-6, 7-7, 7-8, 7-9, 7-10, 7-12, 11-1(a-b). The issues are as
18 summarized in the Petition of NewSouth Communications Corporation
19 ("NewSouth"), NuVox Communications, Inc. ("NuVox"), KMC Telecom V.,
20 Inc. ("KMC V") and KMC Telecom III LLC ("KMCIII") (together, "KMC"),
21 and Xspedius Communications, LLC on behalf of its operating subsidiaries
22 Xspedius Management Co. Switched Services, LLC ("Xspedius Switched")
23 and Xspedius Management Company of Chattanooga, LLC (Xspedius

1 Chattanooga”) (together, “Xspedius”) ¹ I henceforth refer to these companies
2 as the “Petitioners.” Further, I provide supporting evidence that the
3 interconnection agreement language proposed by BellSouth is the appropriate
4 language that should be adopted for this interconnection agreement by the
5 Tennessee Regulatory Authority (“Authority” or “TRA”).
6

7 Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?
8

9 A. Yes. There are numerous unresolved issues in this arbitration that have
10 underlying legal arguments. Because I am not an attorney, I am not offering a
11 legal opinion on these issues. I respond to these issues purely from a policy
12 perspective. BellSouth’s attorneys in BellSouth’s Briefs will address issues
13 requiring legal argument.
14

15 *Item 84; (Issue 6-1): Should payment history be included in the CSR? (Attachment*
16 *6, Section 2.5.1)*
17

18 Q. WHAT IS BELL SOUTH’S POSITION ON THIS ISSUE?
19

20 A. No, it is not appropriate for BellSouth to be required to include payment
21 history in the Customer Service Record (“CSR”). BellSouth has never agreed,
22 nor has BellSouth been ordered, to provide credit information to the CLECs in
23 Tennessee through access to OSS functions. Providing credit information is

¹ The wording of the some of the issues will be revised and updated by the parties and reflected on the Joint Issues Matrix to be filed on June 25, 2004

1 not one of the elements necessary for compliance with non-discriminatory
2 access requirements. Payment history for Tennessee consumers and
3 businesses should be maintained as confidential information and is not
4 necessary in order for a Competitive Local Exchange Company ("CLEC") to
5 order and provision service to an end user.

6
7 ***Item 85; Issue 6-2: Should CLEC have to provide BellSouth with access to CSRs***
8 ***within firm intervals? (Attachment 6, Section 2.5.5)***

9
10 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

11
12 A. Yes, in order to ensure that all telecommunications customers have the same
13 access to telecommunications services in a nondiscriminatory manner, CLECs
14 should be required to provide CSRs to BellSouth within the same interval in
15 which BellSouth provides CSRs to the CLECs. BellSouth is required to
16 provide CSRs to CLECs in intervals prescribed by the Authority, which, if not
17 met, require BellSouth to remit Self-Effectuating Enforcement Mechanisms
18 ("SEEMs") penalties. Although BellSouth is not advocating that CLECs be
19 subject to SEEMS penalties, if CLECs are not held to the same interval
20 standard, they gain an unfair advantage. Also, being unable to receive the
21 same service interval from all local service providers impacts the end user
22 customer.

1 Q. IS BELL SOUTH PROPOSING THAT CLECS COMMIT TO THE
2 ELECTRONIC INTERVALS IN ALL CASES?

3

4 A. No. For example, for access to CSRs, BellSouth is requesting that the CLEC
5 commit to a four-hour interval where electronic access is available. Where
6 electronic access is not available, BellSouth requests that it be provided paper
7 copies of CSR information within forty-eight (48) hours of a valid request.
8 Forty-eight hours is more than reasonable considering the CLEC is subject to
9 the same exclusions that apply to BellSouth's delivery of CSRs. Further, any
10 delay beyond 48 hours quickly becomes end user customer affecting in that
11 BellSouth may not be able to meet a standard (reasonable) due date
12 commitment.

13

14 Q. IS THIS ISSUE SIMILAR AND/OR RELATED TO OTHER ISSUES IN
15 THIS CASE?

16

17 A. Yes. Issue 6-2 is similar to issues 6-6, 6-7 and is related to issue 6-9. Where
18 6-2 relates to the interval for CSR information, 6-6 concerns the FOC delivery
19 interval and 6-7 concerns the interval for Reject Responses. Issue 6-9 concerns
20 reciprocal charges for OSS. All four issues relate to parity of service and the
21 outcome specifically impacts the ability of Tennessee end user customers to
22 receive service in similar timeframes from any local service provider. These
23 issues are of particular significance to BellSouth in its ability to compete for
24 end user customers on equal terms with the Petitioners and other CLECs.

25

1 *Item 86; Issue 6-3: (B) How should disputes over alleged unauthorized access to*
2 *CSR information be handled under the Agreement? (Attachment 6, Sections 2.5.6.2*
3 *& 2.5.6.3)*

4
5 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 86B?

6
7 A. The Party providing notice of the alleged impropriety should notify the
8 offending Party that additional applications for service may be refused, that
9 any pending orders for service may not be completed, and/or that access to
10 ordering systems may be suspended if such use is not corrected or ceased by
11 the fifth (5th) calendar day following the date of the notice. In addition, the
12 alleging Party may, at the same time, provide written notice to the person(s)
13 designated by the other Party to receive notices of noncompliance that the
14 alleging Party may terminate the provision of access to ordering systems to the
15 other Party and may discontinue the provisioning of existing services if such
16 use is not corrected or ceased by the tenth (10th) calendar day following the
17 date of the initial notice. Again, if the other Party disagrees with the alleging
18 Party's charges of unauthorized use, the other Party should proceed pursuant to
19 the dispute resolution provisions set forth in the General Terms and Conditions
20 of the Agreement.

21
22 *Item 88; Issue 6-5: What rate should apply for Service Date Advancement (a/k/a*
23 *service expedites)? (Attachment 6, Section 2.6.5)*

24
25

1 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

2

3 A. BellSouth's obligations under Section 251 of the 1996 Act are to provide
4 certain services in non-discriminatory ("standard") intervals at cost-based
5 prices. There is no Section 251 requirement that BellSouth provide service in
6 less than the standard interval. Nor is there any requirement for BellSouth to
7 provide faster service to its wholesale customers than to its retail customers.
8 Because BellSouth is not required to provide expedited service pursuant to the
9 1996 Act, the Petitioners' request is not appropriate for a Section 251
10 arbitration, and it should not, therefore, be included in the Agreement. If
11 BellSouth elects to offer this service in the Agreement, it should not be
12 penalized for doing so by having TELRIC rates apply to a function that is not
13 even contemplated by the Act.

14

15 *Item 89; Issue 6-6: Should CLEC be required to deliver a FOC to BellSouth for*
16 *purposes of porting a number within a firm interval? (Attachment 6, Section 2.6.25)*

17

18 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

19

20 A. This issue and BellSouth's position are very similar to Issue 6-2. Yes, in order
21 to ensure that all telecommunications customers have the same access to
22 telecommunications services in a nondiscriminatory manner, CLECs should be
23 required to provide Firm Order Confirmations ("FOCs") to BellSouth within
24 the same interval in which BellSouth provides FOCs to the CLECs. BellSouth
25 is required to provide FOCs to the CLEC in intervals prescribed by this

1 Authority, which, if not met, require BellSouth to remit SEEMs penalties. If
2 CLECs are not held to the same standard, the end user customer is impacted by
3 not being able to receive the same service interval from all local service
4 providers.

5
6 ***Item 90; Issue 6-7: Should CLEC be required to provide Reject Responses to***
7 ***BellSouth within a firm interval? (Attachment 6, Section 2.6.26)***

8
9 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

10
11 A. Again, this issue relates directly to Issues 6-2 and 6-6 previously discussed.
12 Yes, in order to ensure that all telecommunications end user customers have
13 the same access to telecommunications services in a nondiscriminatory
14 manner, CLECs should be required to provide FOC Reject Responses to
15 BellSouth within the same interval in which BellSouth provides FOC Reject
16 Responses to the CLECs. The non-mechanized, manual, interval is 24 hours
17 exclusive of Saturdays, Sundays and holidays after BellSouth's submission of
18 an Local Service Request ("LSR"), which is incomplete or incorrectly
19 formatted. BellSouth is required to provide FOC Reject Responses to the
20 CLEC in intervals prescribed by this Authority, which, if not met, require
21 BellSouth to remit SEEMs penalties. If the CLEC is not held to the same
22 standard, the end user customer is impacted by not being able to receive the
23 same service interval from all local service providers.

24
25

1 Q. DO THE PETITIONERS USE THE SAME EXCUSES FOR NOT
2 PROVIDING REJECT RESPONSES TO BELL SOUTH WITHIN A FIRM
3 INTERVAL AS THEY USED IN ISSUES 6-2 AND 6-6?

4
5 A. Yes. Basically the Petitioners say they are not obligated to provide firm
6 intervals for reject responses and FOC delivery like BellSouth is obligated to
7 provide them to CLECs. Again, the Petitioners' are trying to disavow
8 responsibility for providing service to BellSouth that they believe should apply
9 to BellSouth through measurements and penalties. What must remain as most
10 important is that end user customers should be able to expect the same
11 intervals from BellSouth as they can expect from CLECs. CLECs should not
12 be able to take an unfair advantage in marketing their services because
13 BellSouth is tied to firm intervals while CLECs are not.

14
15 *Item 92; Issue 6-9: Should charges for substantially similar OSS functions*
16 *performed by the parties be reciprocal? (Attachment 6, Section 2.9.1)*

17
18 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

19
20 A. Charges for OSS functions performed by the parties should be reciprocal, but
21 only for those functions that the CLEC performs that are substantially similar
22 to those performed by BellSouth and only if the CLEC performs the same OSS
23 functions pursuant to the terms and conditions under which BellSouth bills the
24 CLEC for OSS. For example, FOC turnaround times must be the same as
25 BellSouth's, Reject Response intervals must be the same as BellSouth's, and

1 CSRs must be handled under the same terms and conditions under which
2 BellSouth provides CSRs to the CLEC. Moreover, there are limited functions
3 that the CLECs perform that fall into this category and BellSouth has identified
4 those that do. In the event that the CLECs begin to perform another function
5 that falls into this category, the parties would have to amend the agreement to
6 provide for such function and, at the time such function is identified, would be
7 able to add whatever that function is to those that fall into this category.

8
9 Q. IS BELL SOUTH SUGGESTING THAT INTERVALS FOR CLECS BE THE
10 ELECTRONIC INTERVALS?

11
12 A No BellSouth recognizes that not all CLECs have reached a level of
13 mechanization that permits them to provide electronic notifications to
14 BellSouth. BellSouth is only asking that the CLECs subscribe to the same
15 manual intervals that BellSouth is obligated to provide. This is a reasonable
16 request and one that the CLECs should easily be able to accomplish.

17
18 *Item 93; Issue 6-10: (A) Can BellSouth make the porting of an End User to the*
19 *CLEC contingent on either the CLEC having an operating, billing and/or collection*
20 *arrangement with any third party carrier, including BellSouth Long Distance or the*
21 *End User changing its PIC? (B) If not, should BellSouth be subject to liquidated*
22 *damages for imposing such conditions? (Attachment 6, Section 3.1.1)*

1 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 93A?

2

3 A. Yes. BellSouth can make the porting of an end user to a CLEC contingent on
4 the CLEC having an operating, billing and/or collection arrangement with any
5 third party or contingent on the end user changing its PIC. If another carrier
6 restricts the conditions under which that carrier's end user can retain a PIC, the
7 CLEC should be required to either comply with that carrier's requirements or
8 transfer (port) the end-user with another PIC. In this instance, BellSouth
9 Telecommunications, Inc ("BST") has entered into an agreement with
10 BellSouth Long Distance ("BSLD") that prevents BST from porting an end
11 user to a carrier without a billing agreement with BSLD.

12

13 Q. EXPLAIN WHY SUCH AN AGREEMENT BETWEEN BSLD AND BST
14 WAS NECESSARY.

15

16 A. Prior to receiving relevant FCC authorization to provide in-region
17 interexchange services, BSLD took steps to ensure that it would not
18 inadvertently be assigned in-region customers. Once the FCC authorized
19 BSLD to provide interexchange services in some of BellSouth's in-region
20 states, it was just as important that BSLD not be assigned customers located in
21 states where it is not authorized to provide service or customers for whom it is
22 not technically capable of providing service. BSLD then revised its
23 arrangement with BST so that (1) BST would process end user orders for
24 BSLD service only from CLECs that have in place with BSLD the necessary
25 operating procedures to ensure that BSLD services can be provided to the

1 CLEC's end users and (2) that BST return to the submitting CLEC for
2 clarification any orders requesting BSLD services if that CLEC does not have
3 in place with BSLD the operating procedures needed to provide services to the
4 end user. Such arrangements are not unique to BSLD; any interexchange
5 carrier ("IXC"), including BSLD, must negotiate with local exchange
6 companies ("LECs") the necessary business arrangements that will allow it to
7 provide its service to the end users of these LECs
8

9 Q. HAS THE FCC ADDRESSED THIS ISSUE?

10
11 A Yes. In an Order dated July 15, 2003 in FRN No 0004942-2447, the FCC
12 approved a Consent Decree involving two issues; one of which was
13 BellSouth's rejection of some CLECs' local service requests for lack of an
14 operational agreement with BSLD. BellSouth is in full compliance with the
15 requirements set forth by the FCC in Paragraph 11(b) of the Consent Decree.
16 As such, if a CLEC without an operational agreement with BSLD attempts to
17 port an end user with a BSLD PIC, BellSouth may properly delay or reject the
18 request until the CLEC either enters into an operational agreement with BSLD
19 or the CLEC re-issues the request with a different PIC. There is no reason for
20 the TRA to revisit this FCC determination.

21
22 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 93B?

23
24 A. Liquidated damages provisions are inappropriate. Although Petitioners have
25 stated that liquidated damages are a common mechanism in commercial

1 contracts, once again they disregard the important fact that this is not a
2 commercial contract. This is a regulated contract for which liquidated
3 damages are not appropriate as a remedy. Further, although I am not an
4 attorney, I understand that a state commission cannot make damages awards or
5 assess liquidated damages
6

7 ***Item 95; Issue 7-1: What time limits should apply to backbilling, over-billing, and***
8 ***under-billing issues? (Attachment 7, Section 1.1.3)***
9

10 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?
11

12 A. BellSouth's issue statement reflects that all charges incurred under the
13 agreement should be subject to the state's statute of limitations or applicable
14 Authority rules. Billing in arrears, whether backbilling (billing for services
15 never previously billed), over-billing (issuing credits for services previously
16 billed) or under-billing (billing additional amounts for services previously
17 billed), should not be subject to a shorter limitations period than any other
18 claims related to billing under the agreement. It is not appropriate to parse out
19 certain situations. All billing issues should be subject to the same time
20 limitations. Tennessee Statute §28-3-109 provides for a 6 year limitation to
21 business transactions including backbilling.
22
23
24
25

1 Q. THE CLECS STATE THAT BACKBILLING SHOULD BE LIMITED TO 90
2 CALENDAR DAYS IS THIS REASONABLE?

3
4 A. The CLECs' proposal is nonsensical and impractical Due to the complexity of
5 BellSouth's billing systems, 90 days is not a sufficient amount of time for the
6 retrieval of billing data and records and any system programming to
7 substantiate and support the back billing of under-billed charges. While
8 BellSouth strives to bill incurred charges in a timely manner, it should not be
9 forced to limit back billing to 90 days. Further, state statutes and/or Authority
10 Rules were instituted because these governmental bodies recognized that there
11 are many legitimate situations in which back billing 6 months, one year or
12 longer is appropriate to ensure that companies that provide services are
13 allowed to be properly compensated.

14
15 *Item 97; Issue 7-3: When should payment of charges for service be due?*
16 *(Attachment 7, Section 1.4)*

17
18 Q WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

19
20 A. Payment for services should be due on or before the next bill date (Payment
21 Due Date) in immediately available funds.

22
23 Q. PLEASE PROVIDE RATIONALE FOR BELL SOUTH'S POSITION.

24
25 A. First, the due date requirements as listed in the Access Tariff cannot be

1 differentiated from the due dates for contract rates, both of which appear on the
2 bill. Further, all customer due dates and treatments are generated the same
3 way; therefore, it is not possible to do something different for one customer
4 versus another. Any such change would require a work request, which would
5 apply to all customers. In addition, BellSouth has no way to know when the
6 customer actually receives the bill; thus, it is not reasonable to expect that
7 treatment could be based upon the date the customer receives the bill.
8 Furthermore, BellSouth offers electronic transmission of bills, which would
9 allow Petitioners to receive bills sooner and allow more time for review.
10

11 *Item 98; Issue 7-4: (A) What interest rate should apply for late payments? (B) What*
12 *fee should be assessed for returned checks? (Attachment 7, Section 1.6)*
13

14 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 98A?
15

16 A. The applicable interest rate and/or late payment charge approved by each state
17 commission in BellSouth's tariffs should apply. The Authority-approved
18 interest rate that applies to late payments of regulated charges in Tennessee is
19 1.5% per month for residence customers and state government, and up to 3.0%
20 per month for business customers. BellSouth's billing system is designed to
21 bill the approved tariff rate for all customers in the state; it is not equipped to
22 bill different customers (retail or CLECs) different amounts or different
23 percents within a given state.
24
25

1 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 98B?

2

3 A The Authority-approved rate from the General Subscriber Services Tariff
4 ("GSST") should apply or, in the absence of a tariffed rate, the amount
5 permitted by state law should apply. The Tennessee tariff (GSST A2 4.3G)
6 provides that the returned check/bank draft charge shall be \$20.00 for each
7 time a check or bank draft is returned by the subscriber's financial institution
8 on which it is written. The disagreement here is that BellSouth believes the
9 rate should be the rate as approved in the GSST, which is subject to change
10 from time to time. The Petitioners want the rate to be firmly established in the
11 Agreement. Importantly, the same limitation exists in the rate files for the
12 returned check charge as for the late payment charges. BellSouth's systems
13 are not currently capable of billing different rates for this charge for different
14 customers in the same state. Therefore, BellSouth requests the Authority adopt
15 its position that the tariffed rate for returned checks is appropriate for all
16 CLECs, as well as for BellSouth's retail customers.

17

18 *Item 99; Issue 7-5: What recourse should a Party have if it believes the other Party*
19 *is engaging in prohibited, unlawful or improper use of its facilities or services,*
20 *abuse of the facilities or noncompliance with the Agreement or applicable tariffs?*
21 *(Attachment 7, Section 1.7.1)*

22

23 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

24

25 A. Each Party should have the right to suspend or terminate service in the event it

1 believes the other party is engaging in one of these practices and the other
2 party does not cease such activity promptly.

3

4 Q. WHAT ACTION WOULD BELL SOUTH TAKE IN THE EVENT IT HAS
5 EVIDENCE THAT A CLEC IS ENGAGING IN PROHIBITED,
6 UNLAWFUL OR IMPROPER USE OF BELL SOUTH'S FACILITIES OR
7 SERVICES, ABUSE OF THE FACILITIES OR NONCOMPLIANCE WITH
8 THE AGREEMENT OR APPLICABLE TARIFFS?

9

10 A. BellSouth's language states that BellSouth reserves the right to suspend or
11 terminate service - not that BellSouth will take such action. If the CLEC fails
12 to address the problem, then action will likely be taken. BellSouth's tariffs
13 define the type of activity addressed by this issue and such activity should not
14 be taken lightly or allowed to continue for a protracted period of time.
15 Listening in on party lines, impersonation of another with fraudulent intent,
16 harassing phone calls, threatening calls, use of profane or obscene language,
17 etc., are a few examples of the activities that could cause suspension or
18 termination of service if not immediately ceased or corrected. Because
19 BellSouth cannot suspend access to LENS on a service-by-service basis,
20 suspension would necessarily impact the CLEC on all services. On the other
21 hand, termination of service can be accomplished on a service-by-service
22 basis. BellSouth may decide to take action with respect to a specific service,
23 but at the same time, if the situation is serious enough and the CLEC fails to
24 take appropriate action or gives no indication that it intends to take action,
25 BellSouth needs the ability to take the appropriate correction action through

1 suspension or termination of the service.

2

3 *Item 100; Issue 7-6: Should CLEC be required to pay past due amounts in addition*
4 *to those specified in BellSouth's notice of suspension or termination for*
5 *nonpayment in order to avoid suspension or termination? (Attachment 7, Section*
6 *1.7.2)*

7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

9

10 A. Yes, if the CLEC receives a notice of suspension or termination from
11 BellSouth as a result of the CLEC's failure to pay timely, the CLEC should be
12 required to pay all amounts that are past due as of the date of the pending
13 suspension or termination action.

14

15 Q. PLEASE PROVIDE SUPPORT FOR YOUR POSITION.

16

17 A. By definition, the collections process is triggered when a customer does not
18 pay their bills according to the terms of the Agreement. Once a CLEC fails to
19 meet its financial obligations and the matter is referred to collections, the risk
20 associated with the customer is higher, based on the customer's own behavior.
21 Under the Petitioners' proposed language, BellSouth would be limited to
22 collecting the amount that was stated in the past due letter regardless of the
23 customer's payment performance for subsequent bill cycles. BellSouth has the
24 right and responsibility to protect itself from the higher risk associated with
25 non-payment by insuring that customers are not allowed to continue to stretch

1 the terms of the contract and increase the likelihood of bad debt

2

3 ***Item 101; Issue 7-7: How many months of billing should be used to determine the***
4 ***maximum amount of the deposit? (Attachment 7, Section 1.8.3)***

5

6 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

7

8 A. It is BellSouth's position that the average of two (2) months of actual billing
9 for existing customers or estimated billing for new customers should be used to
10 determine the maximum amount of the deposit. Such a deposit is consistent
11 with the standard practice in the telecommunications industry and BellSouth's
12 practice with its end users.

13

14 ***Item 102; Issue 7-8: Should the amount of the deposit BellSouth requires from***
15 ***CLEC be reduced by past due amounts owed by BellSouth to the CLEC?***
16 ***(Attachment 7, Section 1.8.3.1)***

17

18 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

19

20 A. No, a CLEC's deposit should not be reduced by past due amounts owed by
21 BellSouth to the CLEC. The CLEC's remedy for addressing non-disputed late
22 payment by BellSouth should be suspension/termination of service or
23 assessment of interest/late payment charges similar to BellSouth's remedy for
24 addressing late payment by the CLEC. KMC has already pursued one of these
25 options with BellSouth – they can bill BellSouth for late payment charges

1 today.

2

3 BellSouth is within its rights to protect itself against uncollectible debts on a
4 non-discriminatory basis. BellSouth *must* protect against unnecessary risk
5 while providing service to all requesting CLEC providers. The Petitioners are
6 not faced with the same obligation

7

8 ***Item 103; Issue 7-9: Should BellSouth be entitled to terminate service to CLEC***
9 ***pursuant to the process for termination due to non-payment if CLEC refuses to***
10 ***remit any deposit required by BellSouth within 30 calendar days? (Attachment 7,***
11 ***Section 1.8.6)***

12

13 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

14

15 A. Yes, BellSouth should be permitted to terminate service to a CLEC if the
16 CLEC refuses to remit any deposit required by BellSouth within 30 calendar
17 days. Thirty calendar days is a reasonable time period within which a CLEC
18 should meet its fiscal responsibilities.

19

20 Q. PLEASE EXPLAIN BELL SOUTH'S POSITION.

21

22 A. The purpose of the deposit is to help mitigate BellSouth's risk as it provides
23 services worth millions of dollars every month to CLECs. BellSouth has
24 incurred losses on several occasions over the past few years where a CLEC, for
25 one reason or another, did not or was unable to pay its bills. CLECs are valued

1 customers; however, BellSouth has a responsibility to its shareholders and to
2 its other customers to not assume unnecessary risk.

3

4 ***Item 104; Issue 7-10: What recourse should be available to either Party when the***
5 ***Parties are unable to agree on the need for or amount of a reasonable deposit?***
6 ***(Attachment 7, Section 1.8.7)***

7

8 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

9

10 A. If a CLEC does not agree with the amount or need for a deposit requested by
11 BellSouth, the CLEC may file a petition with the Authority for resolution of
12 the dispute and BellSouth would cooperatively seek expedited resolution of
13 such dispute. BellSouth shall not terminate service during the pendency of
14 such a proceeding provided that the CLEC posts a payment bond for the
15 amount of the requested deposit during the pendency of the proceeding.

16

17 ***Item 106; Issue 7-12: To whom should BellSouth be required to send the 15-day***
18 ***notice of suspension for additional applications for service, pending applications for***
19 ***service and access to BellSouth's ordering systems? (Attachment 7, Section 1.91.)***

20

21 Q. WHAT IS BELL SOUTH'S POSITION ON THIS ISSUE?

22

23 A. The initial 15-day computer-generated notice stating that BellSouth may
24 suspend a CLEC's additional applications for service, pending applications for
25 service and access to BellSouth's ordering systems should go to the

1 individual(s) that the CLEC has identified as its Billing Contact(s).
2 Subsequent notices, not system generated, of security deposits and suspension
3 or termination of services shall be sent via certified mail to the individual(s)
4 listed in the Notices provision of the General Terms and Conditions of the
5 Agreement in addition to the CLEC's designed billing contact.

6

7 ***Item 107; Issue 11-1: (A) Should BellSouth be permitted to charge CLEC the full***
8 ***development costs associated with a BFR? (B) If so, how should these costs be***
9 ***recovered? (Attachment 11, Sections 1.5, 1.8.1, 1.9, & 1.10)***

10

11 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 107A?

12

13 A. Yes, BellSouth should be permitted to charge a CLEC the full development
14 costs associated with a BFR. BellSouth is entitled to recover its costs in
15 provisioning services to a CLEC. Because a BFR is a unique request that the
16 CLEC is making, the CLEC should bear its full development costs.

17

18 Q. WHAT IS BELL SOUTH'S POSITION ON ITEM 107B?

19

20 A. The CLEC should pay the development costs concurrent with its request that
21 BellSouth proceed with the BFR development.

22

23 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

24

25 A Yes.